MEMORANDUM

TO: The Commission
FROM: Thomasenia P. Duncan
General Counsel

Rosemary C. Smith
Associate General Counsel

Amy L. Rothstein
Assistant General Counsel

Cheryl A. F. Hemstreet
Attorney

Esther D. Heiden
Attorney

SUBJECT: Draft Explanation and Justification of the Final Rule on Reporting Contributions Bundled by Lobbyists, Registrants and the PACs of Lobbyists and Registrants

Attached is a draft Explanation and Justification of the Final Rule implementing section 204 of Public Law 110-81, the Honest Leadership and Open Government Act of 2007, regarding the disclosure of contributions bundled by lobbyist/registrants and lobbyist/registrant PACs. See 2 U.S.C. 434(i). The Final Rule was approved by the Commission on December 18, 2008.

We request that this draft be placed on the agenda for the February 3, 2009 continuation of the January 29, 2009 Open Session.

Attachment
FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 104 and 110

[Notice 2009-XXX]

Reporting Contributions Bundled by Lobbyists, Registrants and the PACs of Lobbyists and Registrants

AGENCY: Federal Election Commission.

ACTION: Final Rules and Transmittal of Regulations to Congress.

SUMMARY: The Federal Election Commission is promulgating regulations implementing new statutory provisions regarding the disclosure of information about bundled contributions provided by certain lobbyists, registrants, and political committees established or controlled by lobbyists and registrants. The final rules require authorized committees, leadership PACs, and political committees of political parties to disclose certain information about lobbyists, registrants, and lobbyists’ and registrants’ political committees that provide bundled contributions. Further information is provided in the supplementary information that follows.

DATES: These rules are effective on [INSERT DATE THAT IS 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. However, compliance with paragraphs (b) and (e) of 11 CFR 104.22 is not required until [INSERT DATE THAT IS 3 MONTHS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Political committees that are “lobbyist/registrant PACs” must amend their FEC Form 1 (Statement of Organization) by [INSERT DATE THAT IS 40
DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER.

FOR FURTHER INFORMATION: Ms. Amy L. Rothstein, Assistant General Counsel, Ms. Cheryl A.F. Hemsley, or Ms. Esther Heiden, Attorneys, 999 E Street, N.W., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Commission is promulgating final rules to implement Section 204 of Pub. L. 110-81, 121 Stat. 735, the “Honest Leadership and Open Government Act of 2007,” signed September 14, 2007 (“HLOGA”). See 2 U.S.C. 434(i). HLOGA amended the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431 et seq.) (“FECA”) by requiring certain political committees to disclose information about each registered lobbyist¹ and registrant² (“lobbyist/registrant”), and each political committee established or controlled by a lobbyist or registrant (“lobbyist/registrant PAC”³), that forwards, or is credited with raising, two or more bundled contributions aggregating in excess of the reporting threshold during a specific period of time. See 2 U.S.C. 434(i).

These new disclosure requirements apply only to authorized committees of Federal candidates, political committees directly or indirectly established, financed, maintained or

¹ The term “lobbyist” is defined as any individual “who is employed or retained by a client for financial or other compensation for services that include more than one lobbying contact, other than an individual whose lobbying activities constitute less than 20 percent of the time engaged in the services provided by such individual to that client over a 3-month period.” 2 U.S.C. 1602(10). Any lobbyist who makes a lobbying contact or who is employed or retained to make lobbying contacts, and exceeds the work activity threshold, must register with the Secretary of the Senate and the Clerk of the House of Representatives (“Clerk of the House”) if certain income or expense levels are exceeded. See 2 U.S.C. 1603(a).

² Any organization that has one or more employees who are lobbyists must register on behalf of its lobbyist employees. See 2 U.S.C. 1603(a); see also http://www.senate.gov/legislative/common/briefing/lobby_disc_briefing.htm#3; http://lobbyingdisclosure.house.gov/lda_guide.html

³ “PAC” is an acronym often used to refer to a political action committee other than an authorized committee or a political committee of a political party.
controlled by a candidate or an individual holding Federal office ("leadership PACs"), and party committees.

HLOGA Section 204 requires that the reporting threshold be indexed for inflation annually. HLOGA Section 204 states that the indexing requirement "shall apply" to the reporting threshold beginning "[i]n any calendar year after 2007." See 2 U.S.C. 434(i)(3)(B); 2 U.S.C. 441a(c)(1)(B). Thus, although HLOGA set the initial reporting threshold at $15,000 in 2007, the reporting threshold as indexed for inflation is $16,000 for 2009. The Commission will publish in the Federal Register a notice of the reporting threshold for 2009 shortly.

The Commission is implementing these provisions by adding two new paragraphs to 11 CFR 100.5(e), which sets forth examples of "political committees." In addition, the Commission is adding new section 104.22 to 11 CFR Part 104, which governs reports by political committees and other persons. Finally, in addition to addressing, in new 11 CFR 104.22(g), the price indexing of the new bundling reporting threshold, the Commission is revising one paragraph and adding another in 11 CFR 110.17, which provides for the price indexing and publication of certain contribution and expenditure limits.

The Commission published a Notice of Proposed Rulemaking in the Federal Register on November 6, 2007. See Notice of Proposed Rulemaking on Reporting Contributions Bundled by Lobbyists, Registrants and the PACs of Lobbyists and Registrants. 72 FR 62600 (November 6, 2007) (the "NPRM"). The comment period closed on November 30, 2007. The Commission received eight comments from twelve commenters. The comments are available at

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4 One of these comments was from the Internal Revenue Service, stating that the Internal Revenue Service did not find any conflict between its regulations and the Commission's proposed rules.
http://www.fec.gov/law/law_rulemakings.shtml#bundling. Six of the commenters testified at a hearing held on September 17, 2008. For the purposes of this document, the term “comment” applies to both written comments and oral testimony at the public hearing.

Under the Administrative Procedure Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate, and publish them in the Federal Register at least thirty calendar days before they take effect.

The final rules that follow were transmitted to Congress on February XX, 2009.

These regulations are effective thirty days after publication in the Federal Register. Reporting committees, however, must comply with the disclosure requirements of Section 204 of HLOGA and with the corresponding provisions of new 11 CFR 104.22— that is, with paragraph (b) (Reporting Requirement for Reporting Committees) and paragraph (e) (When to File) – only with respect to reports filed more than three months after these final rules are published in the Federal Register.

This delayed compliance date is required by Section 204(b) of HLOGA, which provides that “the amendment made by [Section 204(a)] shall apply with respect to reports filed under [2 U.S.C. 434] after the expiration of the 3-month period which begins on the date that the regulations required to be promulgated by the [Commission] under [2 U.S.C. 434(i)(5)] become final.” Regulations are final upon their publication in the Federal Register. See Natural Resources Defense Council, Inc. v. EPA, 683 F.2d 752 (3d Cir. 1982).
Reports required to be filed after these final rules are published (and any records corresponding to such reports, as discussed below) need not include activity before the effective date of these regulations, and activity before the effective date does not count toward any aggregate amount for the purposes of the reporting threshold. Thus, monthly filers must begin reporting under new 11 CFR 104.22(b) in May 2009, for bundled contributions that are received in April. Quarterly filers must begin reporting under new 11 CFR 104.22(b) in July 2009, for bundled contributions that are received in April through June 30. Finally, semi-annual filers must begin reporting under new 11 CFR 104.22(b) in July 2009, for bundled contributions that are received beginning on the effective date of these rules (i.e., thirty days after publication in the Federal Register) through June 30. The Commission is not requiring the reporting of contributions bundled by lobbyists/registrants received as of January 1, 2009 through the effective date of these regulations (i.e., 30 days after publication in the Federal Register), because such a requirement would be a retroactive application of the regulation. Contributions bundled by entities that may be lobbyist/registrant PACs and received through 30 days after the effective date of these regulations (i.e., 60 days after publication in the Federal Register) also need not be reported.

Because the Commission is requiring reporting committees to report bundled contributions received as of the effective date of these regulations, but is providing an additional ten days for lobbyist/registrant PACs to amend their Form 1s, there will be at least a ten-day period during which reporting committees may be unable to determine definitively whether an entity is a lobbyist/registrant PAC. Moreover, because the Commission is unable to update its website instantaneously to provide real-time
information regarding amended Form 1s or to provide a list that is reasonably searchable with respect to whether an entity is a lobbyist/registrant PAC, the Commission anticipates an additional delay between the deadline by which lobbyist/registrant PACs are required to amend their Form 1s and when such information becomes available to reporting committees. Accordingly, the Commission is delaying the implementation of these rules with respect to contributions bundled by entities that may be lobbyist/registrant PACs for an additional 30 days after the effective date of these regulations (i.e., 60 days after publication in the Federal Register), during which time reporting committees are not required to report contributions bundled by such entities.

**Explanation and Justification**

**I. Background**

Prior to HLOGA, FECA and Commission regulations imposed certain reporting and recordkeeping requirements for contributions received and forwarded by any person to a political committee. Each person who received and forwarded contributions to a political committee was also required to forward certain information identifying the original contributor. See 2 U.S.C. 432(b); 11 CFR 102.8. Additionally, 2 U.S.C. 441a(a)(8) and 11 CFR 110.6 imposed certain reporting and recordkeeping requirements for contributions received and forwarded by persons known as “conduits” or “intermediaries” to the authorized committees of Federal candidates. The Commission did not propose and is not implementing any changes to these rules.

Section 204 of HLOGA requires each authorized committee of a Federal candidate, leadership PAC and political committee of a political party to disclose certain information about any person reasonably known by the committee to be a
lobbyist/registrant or lobbyist/registrant PAC that forwards to the reporting committee, or
is credited with raising for the reporting committee, two or more bundled contributions
aggregating in excess of the reporting threshold within a “covered period” of time. See 2
U.S.C. 434(i)(1), (2), (3) and (8). Accordingly, Section 204 of HLOGA requires
reporting committees to disclose information about two distinct types of bundled
contributions: (1) contributions that are forwarded to a reporting committee by a
lobbyist/registrant or lobbyist/registrant PAC, and (2) contributions that, although
received by the reporting committee directly from a contributor, are credited by the
reporting committee to a lobbyist/registrant or lobbyist/registrant PAC through records,
designations or other means of recognizing that a certain amount of money has been
raised by that lobbyist/registrant or lobbyist/registrant PAC. Id. Under Section 204 of
HLOGA, a reporting committee must disclose the name and address of the
lobbyist/registrant or lobbyist/registrant PAC, the lobbyist/registrant’s employer (for
individuals), and the aggregate amount of bundled contributions within the covered

II. 11 CFR 100.5 – Political Committee (2 U.S.C. 431(4), (5), (6))

Section 100.5(e) of 11 CFR provides examples of types of political committees.
The Commission is adding two new paragraphs, (e)(6) and (e)(7), to section 100.5
regarding “leadership PAC” and “lobbyist/registrant PAC,” respectively, as examples of
political committees.

A. 11 CFR 100.5(e)(6) – Leadership PAC

The term “leadership PAC” is defined in Section 204(a) of HLOGA as “a political
committee that is directly or indirectly established, financed, maintained or controlled by
[a] candidate [for Federal office] or [an] individual [holding Federal office] but which is not an authorized committee of the candidate or individual and which is not affiliated with an authorized committee of the candidate or individual, except that such term does not include a political committee of a political party.\textsuperscript{5} 2 U.S.C. 434(i)(8)(B).

The new definition of “leadership PAC” is relevant to two areas of HLOGA that fall within the Commission’s purview: (1) the disclosure requirements in Section 204 of HLOGA for contributions bundled by lobbyists/registrants and lobbyist/registrant PACs and (2) restrictions on candidate travel in section 601 of HLOGA. \textsuperscript{6} See Pub. L. No. 110-81, section 601(a) (codified at 2 U.S.C 439a(c)(2)).

The Commission announced its plans to initiate rulemakings for these two provisions on September 24, 2007.\textsuperscript{9} The candidate travel NPRM responsive to section 601 of HLOGA initially proposed a definition of “leadership PAC” as that term applies to both provisions. \textsuperscript{7} See Notice of Proposed Rulemaking on Candidate Travel, 72 FR 59953 (October 23, 2007) (“Candidate Travel NPRM”). The NPRM for this bundling disclosure rulemaking cited to the proposed definition in the Candidate Travel NPRM as the definition to be used. \textsuperscript{8} See NPRM, 72 FR at 62600, fn. 3; \textsuperscript{9} see also Candidate Travel NPRM, 72 FR at 59954. Because these bundling disclosure rules are becoming final before the candidate travel rules, the Commission is including the definition of “leadership PAC” in these final rules.

The Commission is defining “leadership PAC” at 11 CFR 100.5(e)(6) as proposed in the Candidate Travel NPRM. The definition follows the definition of “leadership PAC” as

\textsuperscript{5} This definition is consistent with the Commission’s rules that treat such committees as unaffiliated with a candidate’s authorized committee. \textsuperscript{6} See 11 CFR 100.5(g).

PAC in Section 204 of HLOGA. The Commission received one comment on the proposed definition in response to the Candidate Travel NPRM that supported the substance and location of the new definition, and did not receive any comments opposing it.

B. 11 CFR 100.5(e)(7) - Lobbyist/Registrant PAC

New paragraph (e)(7) refers the reader to the definition in new 11 CFR 104.22(a)(3) of the term "lobbyist/registrant PAC," which is discussed below.

III. New 11 CFR 104.22 - Disclosure of Bundling by Lobbyists/Registrants and Lobbyist/Registrant PACs (2 U.S.C. 434(i))

To implement the requirements of HLOGA Section 204, the Commission is adopting new 11 CFR 104.22. New paragraph (a) defines key terms; paragraphs (b) and (c) set forth the reporting requirements under these new rules; paragraphs (d) and (e) govern where to file and when to file, respectively; paragraph (f) establishes recordkeeping requirements; and paragraph (g) addresses the annual indexing for inflation of the threshold amount of bundled contributions that trigger the reporting requirement for a covered period.

A. 11 CFR 104.22(a) - Definitions

The Commission is adding several new definitions in new 11 CFR 104.22(a).

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1 The term "political committee" applies only to those organizations that are for the purpose of influencing Federal elections. The definition of "leadership PAC" does not cover committees that are not included in the definition of "political committee" (such as State leadership PACs that are established, financed, maintained, or controlled by a State official who runs for Federal office).

HLOGA adds reporting requirements that apply to three types of political committees: authorized committees of a candidate, leadership PACs, and party committees. See 2 U.S.C. 434(i)(6). New 11 CFR 104.22(a)(1) defines "reporting committee" to encompass these three types of political committees, as they are defined in 11 CFR 100.5(e)(4), new (e)(6), and (f)(1). The Commission requested but received no comments on the proposed definition, which is the same as the final rule.

2. 11 CFR 104.22(a)(2) – Lobbyist/Registrant

HLOGA Section 204 applies to contributions bundled by “a current registrant under section 4(a) of the Lobbying Disclosure Act of 1995 [the “LDA”] (2 U.S.C. 1603(a)); an individual who is listed on a current registration filed under section 4(b)(6) of [the LDA](2 U.S.C. 1603(b)(6)) or a current report under section 5(b)(2)(C) of [the LDA](2 U.S.C. 1604(b)(2)(C)), a political committee established or controlled by such a registrant or individual.” 2 U.S.C. 434(i)(7). The NPRM proposed creating a new term, “lobbyist/registrant,” to encompass both current registrants and individuals listed on a current registration or report filed under the LDA.

The NPRM requested comments on whether the reporting requirements of HLOGA Section 204 should also apply to contributions forwarded by or received and credited to a registrant’s employee, where that employee is not listed by the registrant as an in-house lobbyist. Six comments addressed this issue. Four comments opined that the

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*Under section (4)(b)(6) of the LDA, each registration filed with the Secretary of the Senate or Clerk of the House must include the name of each employee of the registrant who has acted or whom the registrant expects to act as a lobbyist on behalf of the registrant or a client; under Section 5(b)(2)(c), each registrant must file quarterly reports with the Secretary of the Senate and the Clerk of the House that include a list of the registrant’s employees who acted as lobbyists on behalf of a client of the registrant during the quarter. See 2 U.S.C. 1603(b)(6).*
crux of the matter would depend on whether the employee was raising funds on behalf of
the employee's registrant employer or was acting on the employee's own behalf. Three
of these comments suggested various standards that the Commission might employ to
determine on whose behalf the non-lobbyist employee is acting. One comment suggested
using a standard based on the law of agency. A second comment suggested using a
standard analogous to that used in determining whether corporate facilitation has taken
place, that is, examining whether the employee was ordered or directed by the
employee's superior to undertake the activity. See 11 CFR 114.2(f)(2)(i)(A). A third
comment suggested creating a rebuttable presumption that certain employees, such as
senior officers and government relations employees of a registrant, are acting on behalf of
their registrant employer.

By contrast, two comments stated that HLOGA covers only activity by
lobbyists/registrants and lobbyist/registrant PACs. One of these comments opined that
the Commission has no authority to go beyond the plain statutory language by requiring
the disclosure of information about individuals who are employed by registrants but are
not themselves lobbyists.

The Commission agrees with the latter two comments. By its express terms,
HLOGA requires the disclosure of information only about lobbyists and registrants.
2 U.S.C. 434(i)(7). This interpretation is further supported by a section-by-section
analysis of HLOGA that was made a part of the record in the Senate debate on HLOGA
by Senator Feinstein. In her remarks, Senator Feinstein stated "I ask unanimous consent
to have printed in the [Congressional] Record a section-by-section analysis of the bill
[HLOGA] we are about to vote on, including legislative history endorsed by the three
principal Senate authors of the legislation: myself, Chairman [of the Senate Committee on Homeland Security and Governmental Affairs] Lieberman and Majority Leader Reid."


The Section-by-Section Analysis specifically states that the disclosure requirements apply only to lobbyists and registrants:

This provision covers only contributions credited to registered lobbyists, as defined in subsection 204(a)(7). Contributions credited to others, including others who may share a common employer with, or work for a lobbyist, are not covered by this section so long as any credit is genuinely received by the non-lobbyist and not the lobbyist.


Thus, the Commission has determined that non-lobbyist employees of lobbyists/registrants or lobbyist/registrant PACs who forward bundled contributions or receive credit from a reporting committee for bundling contributions are outside of the scope of HLOGA Section 204. However, if the reporting committee knows that the person is forwarding the contributions on behalf of a lobbyist/registrant or lobbyist/registrant PAC, such forwarded contributions are within the scope of HLOGA Section 204. The final rule defines “bundled contribution” accordingly. See 11 CFR 104.22(a)(6)(i); see also discussion below at III.6.a.

3. 11 CFR 104.22(a)(3) – Lobbyist/Registrant PAC

New 11 CFR 104.22(a)(3) defines “lobbyist/registrant PAC” as “any political committee that a ‘lobbyist/registrant’ ‘established or controls’” as that term is defined in 11 CFR 104.22(a)(4). This definition tracks the language of HLOGA, which defines
persons" who raise bundled contributions to include a "political committee established
or controlled" by a lobbyist or registrant. 2 U.S.C. 434(i)(7)(C). As discussed below,
any political committee that meets the definition of "lobbyist/registrant PAC" under
11 CFR 104.22(a)(3) must identify itself as such on any FEC Form 1 (Statement of
Organization) that it files with the Commission after the effective date of this rule. See
11 CFR 104.22(c). Committees that have already filed FEC Form 1 with the
Commission and that meet the definition of "lobbyist/registrant PAC" under 11 CFR
104.22(a)(3) are required to amend their FEC Form 1 to reflect this change in status
within ten days after the effective date of this rule. Id.; 11 CFR 102.2(a)(2). Thus, Form
1 must be amended within forty days after the date this rule is published in the Federal
Register. Statements of Organization are filed pursuant to 2 U.S.C. 433, and therefore
are not subject to the mandatory three-month waiting period under HLOGA Section 204,
which applies to reports filed under 2 U.S.C. 434(i).

4. 11 CFR 104.22(a)(4) – Established or Controls
HLOGA Section 204 requires reporting committees to disclose bundled
contributions that exceed the reporting threshold within a covered period, if those
bundled contributions were forwarded by, or received and credited to, any political
committee reasonably known by the recipient reporting committee to be "established or
controlled" by a lobbyist or registrant. 2 U.S.C. 434(i)(7)(C). The NPRM asked several
questions as to when a lobbyist/registrant should be considered to have "established or
[to] control[ ]" a political committee. In the NPRM, the Commission requested but
received no comments on including the separate segregated fund ("SSF") of any
corporation, labor organization or other connected organization (see 11 CFR 100.6) that
is a registrant under the LDA, within the ambit of "lobbyist/registrant PACs."

The NPRM also requested comments on when a nonconnected committee would
be considered to be "controlled" by a lobbyist/registrant, and whether a
lobbyist/registrant that is the treasurer of the political committee controls the committee
per se. One comment on this issue suggested that "controlled" is a recognized term of art
under FECA: for example, political committees "established, financed, maintained or
controlled" by the same person or group of persons are "affiliated" and are treated as a
single committee for contribution purposes. Several comments suggested using factors
similar to those used by the Commission to determine case-by-case affiliation of political
committees under 11 CFR 100.5(g). These comments suggested using such factors as (1)
whether the lobbyist/registrant has the authority to direct or participate in the governance
of the political committee; (2) whether the lobbyist/registrant has the authority to hire,
appoint, demote or otherwise control the officers of the political committee; and (3)
whether the lobbyist/registrant provides significant funding for the political committee on
an ongoing basis. One comment stated that having a lobbyist on the board of directors of
a nonconnected committee or serving as an officer would be an example of per se control
by the lobbyist. Another comment agreed that having a lobbyist acting as treasurer of a
nonconnected committee would constitute per se control, but cautioned against creating a
rule that would make any board membership per se control.

The concept of "established or controlled" in Section 204 of HLOGA, which is
implemented by the Commission in new 11 CFR 104.22(a)(4), relates to the same entities
as does Section 203 of HLOGA, which is implemented by the Secretary of the Senate and
Clerk of the House under the LDA. See 2 U.S.C. 1604(d). Therefore, in addition to the comments’ proposals, the Commission also considered following the description of “established or controlled” set out by the Secretary of the Senate and the Clerk of the House of Representatives in their guidance on reports filed with them under the LDA, which includes the following example:

Lobbyists “C” and “D” serve on the board of a non-connected PAC as member and treasurer respectively. As board members, they are in positions that control direction of the PAC’s contributions. Since both are controlling to whom the PAC’s contributions are given, they must disclose applicable contributions of the PAC on their semi-annual reports.


The Commission decided to use a combination of the House and Senate guidance and the Commission’s own factors to determine whether a lobbyist/registrant established or controls a political committee. Because of the overlap between Sections 203 and 204 of HLOGA with respect to the use of the term “established or controlled,” the Commission concluded that it was preferable, to the extent practicable, to harmonize its rule in new 11 CFR 104.22(a)(4) with the Secretary of the Senate and the Clerk of the House’s implementation of Section 203 of HLOGA under the LDA.

Accordingly, a lobbyist/registrant established or controls any political committee for the purposes of new 11 CFR 104.22(a)(4) if the lobbyist/registrant is required to disclose such political committee to the Secretary of the Senate or the Clerk of the House as being established or controlled by that lobbyist/registrant under Section 203 of HLOGA. If a political committee is able to obtain definitive guidance from the Secretary
of the Senate or Clerk of the House that it is, or is not, required to be disclosed as being
established or controlled by a lobbyist/registrant, then such determination is conclusive
for the purposes of new 11 CFR 104.22, and the political committee need not consider
the Commission's additional criteria described below.

The Commission, is aware, however, that there may be times when a political
committee will not be able to determine definitively from guidance issued by the
Secretary of the Senate and the Clerk of the House, or after communicating with those
offices, whether a political committee is established or controlled by a lobbyist/registrant.
For this reason, the Commission is issuing additional criteria on whether a political
committee is established or controlled by a lobbyist/registrant for the purposes of
HLOGA Section 204. If, after consulting guidance issued by the offices of the Secretary
of the Senate and Clerk of the House or after communicating with those offices, a
political committee is unable to ascertain whether it is established or controlled by a
lobbyist/registrant, the political committee must consult the additional criteria set forth in
new 11 CFR 104.22(a)(4)(ii).

Under these additional criteria, a political committee must first consult new 11
CFR 104.22(a)(4)(ii)(A), which states that a separate segregated fund whose connected
organization is a registrant is a lobbyist/registrant PAC. If the political committee does
not meet the criterion under 11 CFR 104.22(a)(4)(ii)(A), then the political committee
must next look to new 11 CFR 104.22(a)(4)(ii)(B), which sets out two additional
independent criteria for determining whether a political committee is "established or
controlled" by a lobbyist/registrant. The Commission has decided not to incorporate the
broad affiliation analysis at 11 CFR 100.5(g). That analysis would have required the
weighing of several factors in order to determine whether a lobbyist/registrant established or controls a political committee. Instead, to give firm guidance to political committees, the “established or controls” analysis in new 11 CFR 104.22(a)(4)(ii)(B) states that a political committee is established or controlled by a lobbyist/registrant if it meets either of the criteria in paragraph (1) or (2). The Commission notes that HLOGA Section 204 uses the words “established or controlled.” The use of the disjunctive “or” (rather than the conjunctive “and”) means that only one of those criteria need be present to trigger application of the law.

Webster’s Dictionary defines “establish” as “to found, institute, build, or bring into being on a firm or stable basis.” Random House Webster’s Unabridged Dictionary, 2nd Ed. 663 (Random House 2001). The Commission recognizes that several individuals may participate in the establishment of a political committee. Therefore, the first criterion, as set out in new 11 CFR 104.22(a)(4)(ii)(B)(1), provides that a political committee is “established” by a lobbyist/registrant if a lobbyist/registrant had a primary role in the establishment of the political committee, excluding the provision of legal or compliance services or advice.

The second criterion, set forth in new 11 CFR 104.22(a)(4)(ii)(B)(2), provides that a political committee is “controlled” by a lobbyist/registrant if the lobbyist/registrant directs the governance or operations of the political committee, excluding the provision of legal or compliance services or advice. This standard derives from the dictionary definition of “control:” “to exercise restraint or direction over; dominate; command.” Id. at 442. The lobbyist/registrant’s authority to direct, which need not be exclusive to any one person, may derive from the political committee’s controlling documents, such as the
articles of incorporation or bylaws. However, a political committee’s informal
procedures or actual practices may also demonstrate that a lobbyist/registrant directs the
governance or operations of the committee. For example, even a lobbyist/registrant who
is a non-voting member of a political committee’s board of directors may control the
political committee as long as that lobbyist/registrant in fact directs the governance or
operations of the political committee.

Both criteria, as discussed above, exclude the provision of legal or compliance
services or advice from the criteria for determining when a political committee is
established or controlled by a lobbyist/registrant. This exclusion reflects the
Commission’s recognition that, during and after formation, political committees often
consult experts who may be lobbyists/registrants or whose firms are registrants. The new
rule is designed to reach those situations in which the lobbyist/registrant is more actively
involved in the formation or operation of a political committee than merely providing
legal or compliance services or advice. Thus, a political committee’s use for compliance
purposes of an attorney or other expert from a firm that itself is a registrant (or even if the
attorney or expert is a lobbyist/registrant) will not by itself result in the political
committee being established or controlled by a lobbyist/registrant.

5. 11 CFR 104.22(a)(5) – Covered Period

Section 204 of HLOGA requires that reporting committees disclose information
about any lobbyist/registrant or lobbyist/registrant PAC that forwards, or is credited with
raising for the reporting committee, two or more bundled contributions aggregating in
excess of the reporting threshold during any “covered period.” See 2 U.S.C. 434(i)(1),
(2), (3) and (8). HLOGA defines “covered period” as January 1 through June 30, July 1
through December 31 "and . . . any reporting period applicable to the committee under [2 U.S.C. 434] during which any [lobbyist/registrant or lobbyist/registrant PAC] provided two or more bundled contributions to the committee in an aggregate amount greater than [the reporting threshold].” 2 U.S.C. 434(i)(2). HLOGA grants the Commission the discretion to provide for quarterly reporting by political committees that file their campaign finance reports more frequently than on a quarterly basis. 10 See 2 U.S.C. 434(i)(5)(A).

a. The Proposed Definition

The NPRM presented both a proposed and an alternative definition of “covered period.” Under the proposed definition, a “covered period” would be the semi-annual periods of January 1 through June 30 and July 1 through December 31. Additionally, in any calendar year in which a reporting committee is required to file or files monthly or quarterly campaign finance reports, “covered period” would also include the quarterly periods of January 1 through March 31 and July 1 through September 30, if during those periods, a lobbyist/registrant or lobbyist/registrant PAC provided two or more bundled contributions to the reporting committee that aggregate in excess of the reporting threshold.

The Commission received four comments favoring the proposed definition. All four comments stated that the proposed definition was consistent with HLOGA’s

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10 Under FECA, political committees are subject to the following campaign finance reporting requirements: national committees of political parties (including the national congressional campaign committees) must report monthly in all calendar years. see 2 U.S.C. 434(a)(4)(B); 11 CFR 104.5(c)(4); state, district and local committees of political parties are required to file monthly if they exceed certain levels of Federal election activity. see 2 U.S.C. 434(e)(4); 11 CFR 300.36(c); most authorized committees of presidential candidates are required to file monthly during presidential election years. see 2 U.S.C. 434(a)(3); 11 CFR 104.5(b); authorized committees of House and Senate candidates are required to file quarterly. see 2 U.S.C. 434(a)(2); 11 CFR 104.5(a); other political committees may choose to file on either a monthly or a quarterly basis. see 2 U.S.C. 434(a)(4); 11 CFR 104.5(c)(1)-(3).
requirement that the Commission’s regulations provide for the broadest possible
disclosure of lobbyist/registrant bundling activity.

The NPRM also asked whether the statute would support the elimination of
duplicative reporting that would result from the proposed definition of “covered period.”
The NPRM asked, for example, whether there is a statutory basis for the Commission to
consider exempting reporting committees from having to disclose semi-annually
information about lobbyists/registrants or lobbyist/registrant PACs providing bundled
contributions if the information was already fully disclosed in a prior report filed with the
Commission. All four comments were in favor of elimination of duplicative reporting.

As such, they suggested that the Commission design the new reporting schedule to allow
for both quarterly and semi-annual reporting once the reporting threshold has been
exceeded. One comment stated that such a reporting form would assist the public’s
understanding of the data.

b. The Alternative Definition

The alternative definition in the NPRM would provide that, in any calendar year
in which a reporting committee is required to file or files reports on a quarterly or
monthly basis under 11 CFR 104.5, the covered period would be defined as the quarterly
periods of January 1 through March 31, April 1 through June 30, July 1 through
September 30, and October 1 through December 31. Additionally, in any calendar year
in which a reporting committee files semi-annual reports, the covered period would also
include the semi-annual periods of January 1 through June 30 and July 1 through
December 30. The Commission received one comment in favor of this alternative
definition, noting that the alternative definition would result in more persons meeting the
reporting threshold, and thus lead to greater disclosure.

c. Quarterly Covered Periods for Reporting Committees which
   File More Frequently than on a Quarterly Basis

Under both the proposed and the alternative definition of “covered period” in the
NPRM, the Commission would have exercised its authority under HLOGA to require
reporting committees that file monthly campaign finance reports to file their bundling

The Commission asked whether it should, instead, require monthly filers to
disclose information about bundled contributions on a monthly and semi-annual basis.
See 2 U.S.C. 434(i)(5)(A) (“[T]he Commission may . . . provide for quarterly filing . . .
by a committee which files reports . . . more frequently than on a quarterly basis.”).

The Commission received five comments on this question. All supported
quarterly filing schedules for political committees that file their campaign finance reports
on a monthly basis. One comment noted that quarterly filing will result in more persons
meeting the reporting threshold, and thus provide greater disclosure by reporting
committees. The comment further noted that requiring reporting committees to
determine on a monthly basis which entities have forwarded or been credited with raising
contributions in excess of the reporting threshold, and then to determine for that same
period which of those entities are lobbyists/registrants or their PACs, would impose an
undue compliance burden on many reporting committees.

d. Definition of “Covered Period” in Final Rule
The Commission's final rule follows HLOGA Section 204. The final rule provides for different “covered periods” as follows:

Semi-Annual Covered Periods – “Covered period” for each reporting committee is the semi-annual periods of January 1 through June 30, and July 1 through December 31. See 11 CFR 104.22(a)(5)(i).

Quarterly Covered Periods – For reporting committees that file campaign finance reports under 11 CFR 104.5 on a quarterly basis, the covered periods also include the quarters beginning on January 1, April 1, July 1, and October 1, and the applicable pre- and post-election reporting periods in election years. See 11 CFR 104.22(a)(5)(ii). In non-election years, reporting committees other than those authorized by a candidate may file lobbyist bundling disclosure reports only for the semi-annual covered periods. Id.

Monthly Covered Periods – For reporting committees that file campaign finance reports under 11 CFR 104.5 on a monthly basis, the covered periods also include each month in the calendar year, except that in election years, the pre- and post-general election reporting periods are covered periods in lieu of the monthly November and December reporting periods. 11 CFR 104.22(a)(5)(iii); see also 11 CFR 104.5(c)(3)(ii).

This reporting schedule follows the campaign finance reporting schedule for political committees other than authorized committees in 2 U.S.C. 434(a)(4)(B).

HLOGA requires reporting committees to file lobbyist bundling disclosure reports both semi-annually and for “any reporting period applicable” to the reporting committee under 2 U.S.C. 434 during which any lobbyist/registrant or lobbyist/registrant PAC provided two or more bundled contributions to the committee in an aggregate amount exceeding the reporting threshold. 2 U.S.C. 434(i)(2)(C). Conforming the definition of
“covered period” in 11 CFR 104.22(a)(5) with the reporting committee’s campaign finance reporting periods under 2 U.S.C. 434 thus more closely tracks the language of HLOGA than did either the proposed rule or its alternative in the NPRM.

Furthermore, requiring reporting committees to file lobbyist bundling disclosure reports according to their usual campaign finance reporting schedule, including pre- and post-election reports, means that quarterly filers will disclose information about lobbyist bundling activity during the crucial period immediately before an election, as will monthly filers in the period immediately before a general election. The proposed rule and the alternative in the NPRM would have resulted in the disclosure of lobbyist/registrant and lobbyist/registrant PAC bundling information by quarterly and monthly filers only after the close of each calendar quarter which, in some cases, would have been after the relevant election. The Commission’s decision to require pre-election disclosure is consistent with the requirement in HLOGA that the Commission promulgate rules that “provide for the broadest possible disclosure.” 2 U.S.C. 434(i)(5)(D).

The Commission’s decision to conform the definition of “covered period” to a reporting committee’s campaign finance reporting schedule alleviates the concern expressed in several comments that reporting committees might find it difficult to try to implement two different reporting schedules – one for campaign finance reports under 11 CFR 104.5 and one for lobbyist bundling disclosure reports under 11 CFR 104.22. Requiring the filing of bundling disclosure reports and campaign finance reports on the same timeline reduces or alleviates any possible confusion, while at the same time reducing the burden of the reporting requirement. In addition, placing both types of reports on the same timeline will facilitate the public’s ability to compare the two types
of reports accurately, thereby further helping to achieve the public disclosure objectives
of HLOGA. See 2 U.S.C. 434(i)(5)(D). Accordingly, 11 CFR 104.22(a)(5)(ii) and (iii)
define “covered period” to correspond to a reporting committee’s regular campaign
finance reporting schedule under 11 CFR 104.5.

The Commission recognizes, however, that some comments conveyed a
preference for allowing reporting committees that file their campaign finance reports on a
monthly basis to file their lobbyist bundling disclosure reports quarterly, instead. As one
comment noted, requiring reporting committees to make a monthly determination as to
who is a lobbyist/registrant or lobbyist/registrant PAC, and whether or not the reporting
threshold for bundled contributions has been exceeded, would impose a substantial
compliance burden. Recognizing that concern, the regulations adopted by the
Commission permit quarterly filing of the information required by this regulation for
reporting committees that file their campaign finance reports under 2 U.S.C. 434 more
104.22(a)(5)(iv), reporting committees that file their campaign finance reports on a
monthly basis may elect to file their lobbyist bundling disclosure reports on a quarterly,
rather than monthly, basis. Any such reporting committee that chooses to file its lobbyist
bundling disclosure reports on a quarterly basis must follow the same schedule as
quarterly filers: semi-annually; for each calendar quarter; and pre- and post-election, as
discussed above. A reporting committee that wishes to change its reporting schedule
under new 11 CFR 104.22(a)(5) must notify the Commission in writing, just as non-
authorized committees must do for campaign finance reports. See 11 CFR 104.5(c).
Reporting committees may not change their filing frequency more than once per calendar year. See id.

Finally, new 11 CFR 104.22(a)(5)(v) establishes a covered period for reporting committees with respect to special elections and runoff elections. Any such reporting committee that receives two or more contributions forwarded by or raised by and credited to a lobbyist/registrant or lobbyist/registrant PAC that exceed the reporting threshold during the covered period must file FEC Form 3L (Report of Contributions Bundled by Lobbyists/Registrants and Lobbyist/Registrant PACs) at the same time that the reporting committee files its campaign finance reports for the special or run-off election. Special and run-off elections are called under State law, and the Commission sets deadlines for filing campaign finance reports for the elections under 2 U.S.C. 434(a)(9). See also 11 CFR 104.5(h). The new definition of “covered period” for reporting committees active in special and run-off elections thus is consistent with HLOGA’s definition of “covered period,” which includes “any reporting period applicable to the committee under [2 U.S.C. 434].” 2 U.S.C. 434(i)(2).

6. 11 CFR 104.22(a)(6) – Bundled Contribution

HLOGA Section 204 defines the term “bundled contribution” as “with respect to a [reporting committee] and a [lobbyist/registrant or lobbyist/registrant PAC], a contribution (subject to the applicable threshold) which is (i) forwarded from the contributor or any contributors to the [reporting] committee by the [lobbyist/registrant or lobbyist/registrant PAC]; or (ii) received by the [reporting] committee from a contributor or contributors, but credited by the [reporting] committee or the candidate involved (or, in the case of a leadership PAC, by the [officeholder] involved) to the [lobbyist/registrant
or lobbyist/registrant PAC) through records, designations, or other means of recognizing that a certain amount of money has been raised by the lobbyist/registrant or lobbyist/registrant PAC." 2 U.S.C. 434(i)(8)(A).

HLOGA thus recognizes two distinct types of bundled contributions – (1) contributions that are forwarded to the reporting committee by a lobbyist/registrant or lobbyist/registrant PAC, and (2) contributions received by the reporting committee from the contributors that are credited by the reporting committee to a lobbyist/registrant or lobbyist/registrant PAC through records, designations or other means of recognizing that a certain amount of money has been raised by that lobbyist/registrant or lobbyist/registrant PAC. Each type of bundled contribution is discussed separately below.

a. 11 CFR 104.22(a)(6)(i) – Contributions Forwarded to a Reporting Committee by a Lobbyist/Registrant or Lobbyist/Registrant PAC

The first type of “bundled contribution” defined in 11 CFR 104.22(a)(6) is a contribution that is forwarded to the reporting committee by a lobbyist/registrant or lobbyist/registrant PAC. New 11 CFR 104.22(a)(6)(i) states that a forwarded contribution is any contribution delivered or transmitted, by physical or electronic means, to the reporting committee by the lobbyist/registrant or lobbyist/registrant PAC, or by any person that the reporting committee knows to be forwarding such contribution on behalf of a lobbyist/registrant or lobbyist/registrant PAC.

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11 As discussed in section III.H below, because the term “contributions” in FECA includes in-kind contributions, the rules for “bundled contributions” apply to both monetary and in-kind contributions. See 2 U.S.C. 431(8)(A)(i) and 11 CFR 100.51(a), 100.54, 100.56, 109.21(b).
This type of bundled contribution does not result from the reporting committee’s crediting the lobbyist/registrant or the lobbyist/registrant PAC with having raised the contributions in order for the contributions to be included in the aggregate amount of bundled contributions disclosed. Rather, this type of bundled contribution turns solely on the fact that the contributions were forwarded by the lobbyist/registrant or lobbyist/registrant PAC to the reporting committee. Bundled contributions that are forwarded to a reporting committee by a lobbyist/registrant or lobbyist/registrant PAC must be reported regardless of whether the committee awards any “credit” to the lobbyist/registrant or lobbyist/registrant PAC.

The NPRM sought comment as to whether it might be helpful and facilitate compliance if the Commission were to define the term “forwarded” in the rule as, for instance, “arranging or causing the physical or electronic delivery or transmission of a contribution.” NPRM, 72 FR at 62602.

Three comments addressed this question. One comment stated that such a definition would be useful to clarify, for example, that if a lobbyist collects a batch of checks for a candidate but arranges for an employee or third party to give them to the candidate, rather than personally delivering them, those checks have been “forwarded” and the reporting committee must report the information about the bundler if the contributions exceed the reporting threshold.

A second comment stated that the definition of the term “forwarded” should simply restate the Commission’s current “intermediary/conduit” concept at 11 CFR 110.6. This comment suggested that for simplicity, the Commission should apply the
existing standards in 11 CFR 110.6, but exclude the exception in 11 CFR
110.6(b)(2)(i)(E) for any person who is expressly authorized by the candidate or the
candidate’s political committee to engage in fundraising, and who occupies a significant
position in the candidate’s campaign organization.

The third comment stated that such a definition would be helpful, but argued that
HLOGA Section 204(a)(8)(A)(i) covers only contributions that are physically forwarded
by a lobbyist to a reporting committee, rather than contributions forwarded electronically.
In the absence of statutory language to the contrary, the comment argued, the
Commission must adopt the approach set forth in the Section-by-Section Analysis, which
refers to “situation[s] where a lobbyist physically forwards contributions to the

The Commission concludes that a new definition of “forwarded contribution”
would be helpful and that the new definition should appropriately encompass both the
physical and the electronic forwarding of contributions.

The Section-by-Section Analysis explains that the first type of bundled
contribution “covers the situation where a lobbyist physically forwards contributions to
the campaign.” This type of bundled contribution is distinguished from situations in
which contributions are made directly by a contributor to a reporting committee, but are
raised by and credited to a lobbyist/registrant or lobbyist/registrant PAC.

The Commission has long recognized that contributions may be made
electronically. The Commission has also recognized that earmarked contributions may
be forwarded electronically to the recipient candidate committee. See generally Advisory
Opinion 1995-09 (NewtWatch). Accordingly, the Commission has concluded that certain
contributions should not fall outside the scope of HLOGA's reporting requirements simply because they were forwarded electronically. New 11 CFR 104.22 thus requires disclosure of information about lobbyists/registrants and lobbyist/registrant PACs that forward contributions either physically or electronically to a reporting committee if the amount of bundled contributions exceeds the reporting threshold in the covered period.

Examples of contributions forwarded "electronically" include contributions received by a lobbyist/registrant in the form of checks and then deposited by the lobbyist/registrant in its account and transmitted by the lobbyist/registrant electronically to the reporting committee, and contributions received by a lobbyist/registrant PAC via credit card, debit card, or electronic check, including authorization to access credit or debit card funds or banking funds, and then transmitted by the lobbyist/registrant PAC in the form of a check or via credit card to the reporting committee.\textsuperscript{12}

Additionally, 11 CFR 104.22(a)(6)(i) specifies that a bundled contribution means a contribution that is forwarded to the reporting committee by a person that the reporting committee "knows to be forwarding such contribution on behalf of a lobbyist/registrant or lobbyist registrant PAC." This provision covers such situations as when an employee or officer of a lobbyist/registrant or lobbyist/registrant PAC forwards a contribution to a reporting committee, and the reporting committee knows that the employee or officer

\textsuperscript{12} The Commission notes that, in these examples, the lobbyist/registrant also might have to file a conduit report pursuant to 11 CFR 110.6. Conduits, intermediaries, and lobbyist/registrants and lobbyist/registrant PACs that forward bundled contributions are also subject to the rules in 11 CFR 102.8. Conduit or intermediary activities are additionally subject to disclosure by reporting committees under these final rules if the conduits or intermediaries are lobbyist/registrants or lobbyist/registrant PACs and provide bundled contributions exceeding the reporting threshold within the covered period. Furthermore, these final rules do not make permissible any activity otherwise prohibited by the FECA and Commission regulations (e.g., making or facilitating contributions by prohibited sources). See, e.g., 2 U.S.C. 441b(a) and 11 CFR 114.2(f).
forwarded the contributions on behalf of the lobbyist/registrant or lobbyist/registrant PAC.

As noted below, the Commission believes that both the reporting committee and the lobbyist/registrant or lobbyist/registrant PAC have a convergent interest in knowing and having it made known that a lobbyist/registrant or lobbyist/registrant PAC has raised certain contributions for the committee. If the reporting committee knows that the non-lobbyist intermediary is forwarding the checks on behalf of the lobbyist/registrant or lobbyist/registrant PAC, the reporting committee must report information about the lobbyist/registrant or lobbyist/registrant PAC on whose behalf the checks are forwarded, if the reporting threshold is met. The reporting requirement may not be avoided simply because the intermediary who forwarded the contribution was not a lobbyist/registrant or lobbyist/registrant PAC.

For example, a lobbyist may ask a friend, colleague, employee, or courier service to deliver checks collected by the lobbyist to a reporting committee. If the reporting committee knows of that fact, for example, if told orally or by means of a transmittal letter, disclosure of the lobbyist-forwarded contributions cannot be avoided in this case simply because the lobbyist forwarded such contributions through a non-lobbyist intermediary.

b. 11 CFR 104.22(a)(6)(ii) – Crediting Contributions to Lobbyists/Registrants and their PACs

The second type of “bundled contribution” in new 11 CFR 104.22(a)(6) covers contributions received by the reporting committee from the contributors (rather than from a lobbyist/registrant or lobbyist/registrant PAC, as discussed in section III.A.6.a, above)
that are credited by the reporting committee to a lobbyist/registrant or lobbyist/registrant PAC through records, designations or other means of recognizing that a certain amount of money has been raised by that lobbyist/registrant or lobbyist/registrant PAC. 11 CFR 104.22(a)(6)(ii).

i. Received and Credited

The NPRM requested comments on whether the amount of contributions received or the amount of contributions credited should be included in the aggregation toward the reporting threshold.

Two comments addressed this issue. One comment indicated a preference that the reporting committees be required to disclose the amount received, rather than the amount credited, to eliminate any discrepancies in the amounts that lobbyists/registrants and their PACs report they have raised for reporting committees and the amounts that the reporting committees know have or have not been raised. The other comment stated that both the amounts received and credited should determine the amount disclosed. This latter comment stated a belief that the reporting committee is in the best position to determine what credit to give and to whom. The comment noted that what matters under HLOGA is the amount of contributions that the reporting committee credits the lobbyist/registrant or lobbyist/registrant PAC for having raised.

The Commission agrees with the latter comment. Bundled contributions that are forwarded to a reporting committee by a lobbyist/registrant or lobbyist/registrant PAC must be reported regardless of whether the reporting committee provides any "credit" for them. In contrast, the focus of HLOGA's reporting requirement for contributions received directly from contributors is based upon the credit that a reporting committee...
gives to a lobbyist/registrant or lobbyist/registrant PAC for having raised the

contribution. The Commission so concludes for the following reasons:

(A) HLOGA defines “bundled contribution” as a contribution “received by the

committee from a contributor or contributors, but credited by the committee or candidate

involved...to the [lobbyist/registrant or lobbyist/registrant PAC] through records,

designations, or other means of recognizing that a certain amount of money has been

raised by the [lobbyist/registrant or lobbyist/registrant PAC].” 2 U.S.C. 434(i)(8)(A)(ii)

(emphasis added). Thus, the statutory definition has two components: receipt from the

contributor and credit given to the lobbyist/registrant or lobbyist/registrant PAC.

(B) HLOGA’s disclosure requirement is intended to make transparent the

influence that lobbyists/registrants and lobbyist/registrant PACs might gain by raising

contributions for reporting committees. Any such influence may be affected by the

reporting committee’s perception of the value of the lobbyist/registrant’s or

lobbyist/registrant PAC’s fundraising efforts. Accordingly, the purpose behind

HLOGA’s disclosure requirement is best served by requiring reporting committees to

disclose the amount of credit that they give to lobbyist/registrants or lobbyist/registrant

PACs for having raised contributions.

(C) The Section-by-Section Analysis supports this interpretation. It states that the

disclosure requirement would apply only if the reporting committee credits a

lobbyist/registrant or lobbyist/registrant PAC with proceeds of a fundraising event that

the lobbyist/registrant or lobbyist/registrant PAC hosts. See 153 Cong. Rec. S10709

tdaily ed. August 2, 2007) (“An event hosted by a registered lobbyist may trigger the

disclosure requirement if the committee credits the lobbyist with the proceeds of the

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(emphasis added). The Section-by-Section Analysis also emphasizes that the reporting requirement depends on whether the committee gave credit to the lobbyist/registrant or lobbyist/registrant PAC, as opposed to requiring a committee to report automatically the proceeds of any fundraising event held on the premises of a lobbyist/registrant or lobbyist/registrant PAC. ("The disclosure requirement is not triggered by general solicitation of contributions where a registered lobbyist attends an event or an event is held on the premises of a registrant.") Therefore, the Commission believes that the focus of HLOGA Section 204 is the credit provided by the reporting committee to the lobbyist/registrant or lobbyist/registrant PAC for having raised contributions.

(D) Further, the Commission notes that Congress may have anticipated the possible discrepancy between the amount that a lobbyist/registrant or lobbyist/registrant PAC may claim to have raised for a reporting committee, and the amount that the reporting committee reports as actually credited to a lobbyist/registrant or lobbyist/registrant PAC. Earlier versions of the Senate bill that eventually became HLOGA Section 204 would have placed the reporting obligation for contributions "collected or arranged" by a lobbyist or registrant solely on the lobbyist or registrant. S.1, 110th Cong. § 212 (as passed by the Senate, Jan. 1 2007). Because of concerns about the accuracy of the information that would be reported, however, a subsequent House bill, H.R. 2317 also would have required registered lobbyists to give notice to the recipients of these contributions before the lobbyists filed their reports. H.R. 2317, 110th Cong. § 2(a) (as passed by the House, July 31, 2007). The Committee Report for this bill explained the provision: "[t]his notice enables the covered recipient to raise any questions
with the lobbyist about the information, and to take any appropriate action, prior to the
public filing of the information.” H.R. Rep. 110-162, at 4 (May 21, 2007). As enacted,
HLOGA addressed this concern by requiring the reporting committees themselves to
disclose contributions forwarded by, or raised by and credited to, lobbyists. See 2 U.S.C.
434(i)(I). In short, this evolution reflects the reality that simply because a lobbyist or
registrant claims to have raised a specific amount for a reporting committee does not
make it so. Instead, Congress anticipated that the reporting committees themselves
would be in the best position to determine whether they had received contributions and
credited the contributions to a lobbyist/registrant or lobbyist/registrant PAC.

Accordingly, new 11 CFR 104.22(a)(6)(ii) follows HLOGA, as explained in the
Section-by-Section Analysis, in requiring that a contribution be both received by the
reporting committee and credited to a lobbyist/registrant or lobbyist/registrant PAC to
satisfy the definition of “bundled contribution.” See 2 U.S.C. 434(i)(8)(A)(ii). Thus, for
example, if a lobbyist merely tells a candidate that the lobbyist has raised $20,000 for the
candidate’s campaign those contributions are not considered “bundled contributions”
under 11 CFR 104.22(a)(6)(ii) unless they have been both received and credited by the
candidate or the reporting committee.

The Commission emphasizes that any intentional misrepresentation or
misreporting of the reporting committee’s actual crediting of bundled contributions is a
violation of this rule.

ii. 11 CFR 104.22(a)(6)(ii)(A) – Records, Designations, or
Other Means of Recognizing
HLOGA Section 204 requires the disclosure of information about lobbyists/registrants and lobbyist/registrant PACs that are credited by a reporting committee, "through records, designations or other means of recognizing," with having raised contributions in excess of the threshold amount for the reporting committee.


**A. Records**

HLOGA states that reporting committees may credit lobbyists/registrants or lobbyist/registrant PACs "through records, designations, or other means of recognizing."

2 U.S.C. 434(i)(8)(A)(ii). The NPRM requested commenters to submit examples of "records, designations or other means of recognizing" that a lobbyist/registrant or lobbyist/registrant PAC had raised contributions for a reporting committee. NPRM, 72 FR at 62603.

The Commission received one comment addressing the "records" aspect of crediting. The comment observed that the proposed rule did not define the type of "record" that would trigger the reporting requirement and asked that the final rule indicate the level of specificity or certainty required for a "record" to constitute credit.

The Commission has decided to draw from the Federal Rules of Civil Procedure to define "records" in new 11 CFR 104.22(a)(6)(ii)(A). "Records" means written evidence, which includes writings, charts, computer files, tables, spreadsheets, databases, or other data or data compilations stored in any medium from which information can be obtained. 11 CFR 104.22(a)(6)(ii)(A); see also Fed. R. Civ. P. 34. In sum, a "record" is any method that the reporting committee uses to retain information pertaining to the committee's crediting, and includes not just paper, but electronic, digital, audio, video, or
any other format. The Commission notes that records include informal items such as
dhand-written notations on a business card.

B. Designations or other means of recognizing

The proposed rules in the NPRM would have defined “designations or other
means of recognizing” to include “titles [bestowed upon lobbyists/registrants or
lobbyist/registrant PACs] based on levels of fundraising, access to events reserved
exclusively for those who generate a certain level of contributions, or similar benefits
provided as a reward for successful fundraising.” NPRM, 72 FR at 62603. The NPRM
asked whether “designations or other means of recognizing” must be written and sought
other examples of crediting through “designations or other means of recognizing.”

Several comments addressed this issue. All of them asserted that the “designation
or other means of recognizing” bundled contributions need not be written. Some
comments argued that the standard should be one of knowledge by the candidate
involved or by the reporting committee that the committee has received a certain amount
of bundled contributions raised by a lobbyist/registrant or lobbyist/registrant PAC, but
others disagreed.

One comment indicated that additional examples of “designations and other
means of recognizing” bundled contributions could include (1) being the host or co-host
of a fundraising event; (2) using a lobbyist/registrant’s or lobbyist/registrant PAC’s office
or residence for a fundraising event; or (3) being on a steering committee in exchange for
raising a certain amount of money. With respect to the first two suggested examples, the
Commission notes that the Section-by-Section Analysis specifically states, “[t]he
disclosure requirement is not triggered . . . where . . . an event is held on the premises of a
registrant. An event hosted by a registered lobbyist may trigger the disclosure requirement if the reporting committee credits the lobbyist with the proceeds of the fundraiser through record, designation, or other form of recognition...” 153 Cong. Rec. S10709 (daily ed. August 2, 2007) (emphasis added). Thus, the Section-by-Section Analysis indicated that the simple fact that a lobbyist/registrant or lobbyist/registrant PAC hosts a fundraiser or holds a fundraiser on its premises would not, by itself, trigger the reporting requirement.

Two comments cited the Bush “Pioneer/Ranger model,” in which bundlers were given titles corresponding with the amounts of money raised, as an example of crediting. One comment also referred to the earmarking standard of “implied or expressed, oral or written” designation as analogous to the standard that the Commission should set for what type of designation would constitute crediting. See 11 CFR 110.6(b)(1). One comment noted that crediting is not necessarily the same thing as keeping records.

Consistent with the statutory imperative to provide for the broadest possible disclosure consistent with the law (2 U.S.C. 434(i)(5)(D)), the Commission has determined that the phrase “designations, or other means of recognizing that a certain amount of money has been raised” is to be construed broadly as encompassing benefits given by the reporting committee to a lobbyist/registrant or lobbyist/registrant PAC for raising a certain amount of contributions.

The Section-by-Section Analysis provides “honorary titles within the committee” as an example of “designations.” 153 Cong. Rec. at S10709 (daily ed. August 2, 2007). The Commission has incorporated this concept in its regulations. Thus, designations include titles that the reporting committee gives to persons who have raised a certain
The amount of contributions. 11 CFR 104.22(a)(6)(ii)(A)(1). The titles that various presidential campaigns have given to their fundraisers are examples of such designations. Titles, however, are only one example of a "designation."

Similarly, the Commission interprets "other means of recognizing that a certain amount of money has been raised" as benefits that reporting committees use to credit lobbyist/registrants or lobbyist/registrant PACs for having raised a certain amount of contributions, and not to include benefits given to such individuals or entities solely for any other reason. The example in the Section-by-Section Analysis is instructive:

"examples of such recognition include access to certain events reserved exclusively for those who generate a certain level of contributions or similar benefits provided by the committee as a reward for successful fundraising." 153 Cong. Rec. at S10709 (daily ed. August 2, 2007). Thus, if a reporting committee holds an event in recognition of its fundraisers, to which it invites only persons who raised at least $20,000, invitations to the event would be a means of recognizing that a "certain amount of money has been raised" (i.e., at least $20,000). 11 CFR 104.22(a)(6)(ii).

Additionally, a candidate may credit a lobbyist by inviting the lobbyist to an event that is not exclusive to those who generate a certain level of contributions, so long as that particular invitation was extended in recognition of the lobbyist having raised a certain amount of contributions. In contrast, if, for example, an individual who happens to be a lobbyist, but who has not actually raised any money for the reporting committee, is invited to the event, then the invitation to that individual would not constitute crediting with respect to that individual (i.e., a means of recognizing that a certain amount of money has been raised by that individual). On the other hand, if a lobbyist who has
raised contributions in excess of the reporting threshold is invited to an event in recognition of the reporting committee's fundraisers, the committee cannot avoid disclosing that lobbyist by claiming that the lobbyist was invited for some other reason.

The Commission agrees with those comments that urged that neither designations nor "other means of recognizing" need be in writing. 2 U.S.C. 434(i)(8)(A)(ii). While the inherent nature of "records" is that they be in writing, or "recorded" in some form, "designations or other means of recognizing" need not be. The example in the Section-by-Section Analysis of "access to certain events reserved exclusively for those who generate a certain level of contributions or similar benefits provided by the committee as a reward for successful fundraising," is again instructive. 153 Cong. Rec. at S10709 (daily ed. August 2, 2007). Access to events may be memorialized in records (such as guest lists) but they will not necessarily be so.

New 11 CFR 104.22(a)(6)(ii)(A) expands on the examples suggested in the Section-by-Section Analysis. Thus, "other means of recognizing" include tracking identifiers that the reporting committee assigns and that are included on contributions or contribution-related materials (for example, contributor response devices, cover letters, or Internet website solicitation pages) that may be used to maintain information about the amounts of contributions that a person raises. 11 CFR 104.22(a)(6)(ii)(A)(2). Other "means of recognizing" also include access, including offers of attendance (invitations) and/or actual attendance, at events given to a lobbyist/registrant or lobbyist/registrant PAC by the reporting committee as a result of the lobbyist/registrant or lobbyist/registrant PAC having raised a certain amount of contributions. 11 CFR 104.22(a)(6)(ii)(A)(3).

Another common means of recognizing those who bundle contributions are mementos,
such as photographs with the candidate or autographed copies of books authored by the
candidate, given by the reporting committee to persons who have raised a certain amount

The fact that a reporting committee knows that a contribution was raised by a
lobbyist/registrant or lobbyist/registrant PAC and credits the lobbyist/registrant or
lobbyist/registrant PAC through some means of recognition is sufficient to satisfy this
final type of credit. The examples listed in the new rule are illustrative, and are designed
to give guidance, but do not constitute an exhaustive list. Committees may be creative in
how they recognize their fundraisers, and the Commission has no interest in limiting or
discouraging creative incentives that are consistent with the law.

The Commission notes that some comments suggested that mere knowledge by a
reporting committee that a lobbyist/registrant or lobbyist/registrant PAC has raised funds
of a certain amount is enough to constitute credit. Although Congress could have enacted
a provision in HLOGA to require reporting if a reporting committee simply “knows or
has reason to know” that a contribution was raised by a lobbyist/registrant or
lobbyist/registrant PAC, without requiring that the reporting committee credit a
lobbyist/registrant or lobbyist/registrant PAC for the contribution, neither HLOGA as
enacted, nor the Section-by-Section Analysis, suggested any intent to require reporting in
that situation. In several instances similar to this, Congress has used a “knows or has
reason to know” standard in sections of FECA, but did not do so here. See, e.g., 2 U.S.C.
434(f)(2)(D) (requiring the reporting of names of candidates to be identified in an
electioneering communication “if known”); 2 U.S.C. 434(i)(1) (requiring the reporting of
information on each person “reasonably known” to be a lobbyist/registrant or
lobbyist/registrant PAC; 2 U.S.C. 441a(f) (prohibiting candidates or political committees from “knowingly” accepting contributions in violation of FECA); and 2 U.S.C. 441b(a) (prohibiting candidates or political committees from “knowingly” accepting or receiving contributions from national banks, corporations, or labor organizations).

Instead, HLOGA as enacted, and as confirmed by the Section-by-Section Analysis, requires credit to be given by the reporting committee to a lobbyist/registrant or lobbyist/registrant PAC before a contribution received from a contributor is considered a “bundled contribution.” 2 U.S.C. 434(i)(8)(A)(ii); see also 153 Cong. Rec. S10709 (daily ed. August 2, 2007). Therefore, mere knowledge, in and of itself, is not enough. Rather, it is necessary for a reporting committee to credit through “records, designations, or other means of recognizing that a certain amount of money has been raised” before reporting is required.

iii. 11 CFR 104.22(a)(6)(ii)(B) – The Candidate Involved

HLOGA requires the disclosure of information about lobbyists/registrants or lobbyist/registrant PACs that are credited by a reporting committee or the “candidate involved” with the reporting committee as having raised a “certain amount” of contributions for the reporting committee. 2 U.S.C. 434(i)(8)(A)(ii). HLOGA does not define “candidate involved.”

The Section-by-Section Analysis defines the “candidate involved” for each of the three types of reporting committee (i.e., authorized committees of Federal candidates, leadership PACs and political party committees). First, the Section-by-Section Analysis defines the “candidate involved” in an authorized committee as “the candidate for whom the committee is the principal campaign committee.” 153 Cong. Rec. S10709 (daily ed.
August 2, 2007). This definition follows the definition of “authorized committee” in FECA, which states that an authorized committee is a political committee authorized by a candidate to receive contributions or make expenditures on behalf of the candidate. 2 U.S.C. 431(6); see also 11 CFR 100.5(f)(1). Second, the Section-by-Section Analysis indicates that the “candidate involved” in a leadership PAC is “the candidate who directly or indirectly establishes, finances, maintains or controls the Leadership PAC,” which tracks the definition of leadership PAC in HLOGA. See 2 U.S.C. 434(i)(8)(B); 153 Cong. Rec. S10709 (daily ed. August 2, 2007). Last, the Section-by-Section Analysis also indicates that the “candidate involved” in a party committee is the chairman of the party committee. See 153 Cong. Rec. S10709 (daily ed. August 2, 2007).

The proposed rules followed the definitions in the Section-by-Section Analysis for authorized committees and leadership PACs, but did not include a definition of “candidate involved” in the context of a political party committee.

The only comment that addressed this topic referred to the Section-by-Section Analysis and suggested that the final rules include a definition of “candidate involved” with party committees, in addition to those proposed for authorized committees of Federal candidates and for leadership PACs.

The Commission agrees with the comment that a definition of “candidate involved” for all three types of reporting committees would provide useful additional guidance to the regulated community. Accordingly, new 11 CFR 104.22(a)(6)(ii)(B) defines “candidate involved” in accordance with the Section-by-Section Analysis.
iv. Co-hosting Fundraisers

Another issue in the NPRM that several comments addressed was how a reporting committee should give credit to multiple lobbyists/registrants or lobbyist/registrant PACs that co-host fundraisers or raise funds for a candidate as a result of any coordinated effort. Although HLOGA Section 204 did not explicitly address co-hosted fundraisers, in a colloquy on the Senate floor, two Senators stated that there was concern that reporting committees would attempt to avoid the reporting requirements by dividing the total receipts of a fundraising event among many co-hosts on a prorated basis or another allocation method potentially designed to avoid disclosure. 153 Cong. Rec. S10699 (daily ed. August 2, 2007). To prevent this, one Senator stated that where two or more lobbyists/registrants or lobbyist/registrant PACs are co-hosts of a fundraiser, then each lobbyist/registrant or lobbyist/registrant PAC “should be treated as providing the total amount raised at the event” for the purposes of reaching the reporting threshold, and for the purposes of reporting “bundled contributions” under HLOGA Section 204. Id.

The Commission has considered this colloquy in light of the text of HLOGA and the Section-by-Section Analysis, which describes bundled contributions as those where a “committee or candidate credits a registered lobbyist for generating the contributions and where such credit is reflected in some form of record, designation or recognition.” 153 Cong. Rec. S10709 (daily ed. August 2, 2007) (emphasis added). The Section-by-Section Analysis states that “[a]n event hosted by a registered lobbyist may trigger the disclosure requirement if the committee credits the lobbyist with the proceeds of the fundraiser...” Id. (emphasis added).
Three comments urged the Commission to promulgate regulations requiring the reporting committee in all instances to credit each of the hosts for the entire amount raised for purposes of bundling disclosure.

By contrast, a fourth comment argued that crediting each host with the total amount raised would result in inaccurate and misleading reporting of the actual amount raised. This comment indicated a preference for an approach under which credit for the amount raised should be prorated among the fundraiser’s co-hosting lobbyists/registrants and lobbyist/registrant PACs. Other comments, however, disagreed, arguing that proration among a fundraiser’s co-hosts would enable reporting committees to avoid reporting bundled contributions by increasing the number of co-hosts, such that when the total amount of contributions raised is divided among them, none of the co-hosts would be credited with raising more than the reporting threshold.

Other comments supported the Section-by-Section Analysis. They asserted that the amount of funds a reporting committee actually credits of the funds raised at a fundraiser hosted by multiple lobbyists/registrants and/or lobbyist/registrant PACs is the amount that should be disclosed. One comment noted that the reporting committees know best who they credited for raising bundled contributions at a co-hosted fundraiser, and how much, and that there should not be a regulatory mandate requiring committees to give and report credit in a contrary manner. Moreover, the comment pointed out that an individual may be listed as a “co-host” of a fundraiser for many different reasons unrelated to actual amounts raised from a particular event. Another comment noted that in many cases, to be on a hosting committee, a lobbyist/registrant or lobbyist/registrant PAC is required to raise a certain amount of contributions. The comment stated that if a
co-host fails to raise the requisite amount, the reporting committee would not credit that
co-host with having raised more than the co-host actually raised. The comment also
pointed out that in other situations, where, for example, 25 members of a host committee
each raise $3,000, the reporting committee would not credit each co-host with having
raised the full $75,000.

After considering the colloquy on the Senate floor, the Section-by-Section
Analysis, and the comments received, the Commission concludes that any determination
of whether the reporting threshold is met, and how much must be reported, is controlled
by (a) whether a reporting committee credits a lobbyist/registrant or lobbyist/registrant
PAC for having raised contributions, and (b) how much the reporting committee credits
the lobbyist/registrant or lobbyist/registrant PAC with having raised. Both the reporting
committee and the fundraiser have independent incentives to ensure that credit for funds
raised is properly attributed – on the one hand, the reporting committee is motivated to
provide appropriate credit in an effort to encourage the fundraiser to continue raising
funds and, on the other hand, the fundraiser is motivated to ensure that the fundraiser is
receiving the proper credit for any funds raised. As noted above, the Commission
received testimony that committees, in order to have effective fundraising programs, need
to know and do know who is raising funds for them and how much those persons are
raising. The Commission believes that this dual motivation will result in the accurate
reporting of actual credit given.

Requiring a reporting committee to credit the entire amount raised at a fundraiser
to each lobbyist/registrant and lobbyist/registrant PAC co-host could be confusing and
could lead to the compelled disclosure of potentially misleading information. The
requirement could be confusing, because it would involve the creation of two separate
and potentially inconsistent definitions of crediting: one to apply in every situation other
than co-hosted fundraising events, and the other to apply only in situations involving co-
hosted fundraising events. Under the non-co-host definition, a reporting committee
would disclose information about a lobbyist/registrant only if the reporting committee
actually credits the lobbyist/registrant with having raised contributions exceeding the
threshold amount during the covered period. Under the co-host definition, by contrast, a
reporting committee would disclose information about a lobbyist/registrant or
lobbyist/registrant PAC co-host regardless of whether or how much the reporting
committee actually credits the co-host for having raised. Such a result could lead to
further confusion as to who is raising contributions, and how much, for reporting
committees.

As noted above, the Section-by-Section Analysis provides that “[a]n event hosted
by a registered lobbyist may trigger the disclosure requirement if the [reporting]
committee credits the lobbyist with the proceeds of the fundraiser . . .” 153 Cong. Rec.
S10709 (daily ed. August 2, 2007) (emphasis added). The Commission reads this
statement as an expression of legislative intent to apply not only to lobbyists hosting
fundraising events or functions, but also to lobbyists that co-host the events or functions,
regardless of whether such events or functions are formal or informal.

Finally, as discussed below, requiring a reporting committee to credit the entire
amount raised at a fundraiser to each lobbyist/registrant and lobbyist/registrant PAC co-
host could be potentially misleading. It would require reporting committees to report not
only that they credited lobbyist/registrant and lobbyist/registrant PAC co-hosts for raising
more money than the co-hosts might actually have raised, but also that they gave the co-hosts credit when, in fact, credit was not given. For example, if a group of individuals consisting of lobbyists and non-lobbyists co-host a fundraiser for a candidate, the candidate’s committee would have to report that each of the lobbyists raised the entire amount, without regard to how much the reporting committee credited them for having raised, without regard to how much they might actually have raised, and without regard to the non-lobbyist co-hosts. This could result in committees reporting information that they know to be untrue. One comment stated that treasurers would be reluctant to sign such reports.

The Commission similarly rejected the suggestion that it require credit for the entire amount of contributions raised at a co-hosted fundraising event to be pro-rated among all of the co-hosting lobbyists/registrants and lobbyist/registrant PACs. Not only would such a requirement enable reporting committees to avoid the reporting threshold by increasing the number of co-hosts, as noted by several comments, but it would also raise the same potential for confusion and inaccuracy as would requiring the full amount raised to be credited to each co-host.

Thus, the Commission has decided not to adopt either the suggestion that the total proceeds of a fundraising event be required to be prorated among all the co-hosts, or the suggestion that the total proceeds of any event be required to be credited to each of the co-hosts. Instead, co-hosted events will be treated like any other fundraising activity: committees must report the actual amounts raised by and credited to lobbyist/registrants and lobbyist/registrant PACs.
Accordingly, the Commission concludes that reporting committees are in the best position to determine the amount of contributions raised by lobbyists/registrants and their PACs from co-hosted fundraisers, based on the reporting committees’ recognition of the amount each person actually raised. This conclusion is consistent with both the language of the statute and the Section-by-Section Analysis.

Contributions raised as the result of a fundraising event hosted by one or more lobbyist/registrants or lobbyist/registrant PACs will follow the general rule in new 11 CFR 104.22(a)(6)(ii), which requires that a contribution be both received by the reporting committee and credited to a lobbyist/registrant or lobbyist/registrant PAC to satisfy the definition of “bundled contribution.” The reporting committee must disclose any and all bundled contributions received as the result of a fundraiser that are credited to a lobbyist/registrant or lobbyist/registrant PAC so long as the reporting threshold has been exceeded for that lobbyist/registrant or lobbyist/registrant PAC during the relevant covered period. The following are examples that assume a $16,000 reporting threshold:13

- **Example 1.** A fundraising event is co-hosted by Lobbyists A, B, and C. The event generates $20,000 in contributions. The reporting committee believes that Lobbyist A raised the entire $20,000 and thus credits Lobbyist A with the entire $20,000 raised at the event, and does not credit Lobbyists B or C. The reporting committee must disclose the $20,000 that has been credited to Lobbyist A. The reporting committee need not disclose any information regarding Lobbyists B and C, because neither Lobbyists B nor C has been credited with any bundled contributions.

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13 For 2009, the applicable reporting threshold is $16,000. Although HLOGA Section 204 set the initial reporting threshold at $15,000, 2 U.S.C. 434(i)(3)(A), this number will be indexed for inflation annually. 2 U.S.C. 434(i)(3)(B); 11 CFR 104.22(g).
• **Example 2.** A fundraising event is co-hosted by Lobbyist A and Lobbyist B, as well as three non-lobbyist hosts. The event generates $20,000 in contributions. The reporting committee gives each host credit for raising $20,000. The reporting committee must disclose the $20,000 of bundled contributions that has been credited to Lobbyist A and also report the $20,000 of bundled contributions that has been credited to Lobbyist B because the reporting committee has credited the full amount to each lobbyist.\(^{14}\) The reporting committee may, if it chooses, include a memo entry in the space provided on FEC Form 3L to indicate that, although only a total of $20,000 was raised at the event, that full $20,000 was credited to each of the co-hosts, or any other information that the reporting committee wishes to include.

• **Example 3.** A fundraising dinner is co-hosted by Lobbyist A and Lobbyist B, as well as three non-lobbyist hosts. Each host takes responsibility for filling eight seats at $500 a seat. The fundraiser generates $20,000 in contributions from non-hosts, and the reporting committee credits each host with generating $4,000 in contributions. The reporting committee must disclose the $4,000 of bundled contributions that has been credited to Lobbyist A, if the reporting committee also has credited Lobbyist A with more than $12,000 of other bundled contributions during the relevant covered period, thereby causing Lobbyist A to surpass the $16,000 reporting threshold. This same analysis would apply for Lobbyist B.

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\(^{14}\) The reporting committee would report having received only $20,000 on FEC Form 3 and would provide itemized information on Schedule A related to the $20,000 of received contributions. It is only the credit that is reported twice on FEC Form 3L (see section III-B below) and this would be a direct result of the reporting committee having given the full $20,000 credit to two different lobbyists. A reporting committee may give credit to all co-hosts for the full amount raised, but is not required to do so.
• **Example 4.** A fundraising event is co-hosted by Lobbyist A and Lobbyist B, as well as three non-lobbyist hosts. The fundraiser generates $21,000 in contributions and the reporting committee knows that Lobbyist A raised $17,000 of the total. The Committee credits Lobbyist A with generating $17,000 of the contributions and credits Lobbyist B, as well as the three non-lobbyist hosts as having generated $1,000 each. The reporting committee must disclose the $17,000 of bundled contributions that has been credited to Lobbyist A because this amount is in excess of the $16,000 reporting threshold. The reporting committee must also disclose the $1,000 in bundled contributions that has been credited to Lobbyist B if the reporting committee also has credited Lobbyist B with more than $15,000 of other bundled contributions during the relevant covered period, thereby causing Lobbyist B to surpass the $16,000 reporting threshold.

• **Example 5.** A fundraising event is co-hosted by Lobbyist A and Lobbyist B, as well as three non-lobbyist hosts. The fundraiser generates $20,000 in contributions and the reporting committee knows that Lobbyist A raised $17,000 of the total and that one of the non-lobbyist hosts raised the remaining $3,000. The Committee credits Lobbyist A with generating $17,000 of the contributions. The reporting committee must disclose the $17,000 of bundled contributions that has been credited to Lobbyist A because $17,000 is in excess of the $16,000 reporting threshold. The reporting committee need not disclose any information regarding Lobbyist B because Lobbyist B is not responsible for raising any of the
$20,000 raised at the fundraiser and Lobbyist B has not been credited with any bundled contributions.

The Commission notes that the examples and above discussion do not apply to bundled contributions that are forwarded by lobbyists/registrants or lobbyist/registrant PACs at co-hosted fundraisers. Credit is not a consideration in the case of forwarded contributions. Accordingly, contributions forwarded by a lobbyist/registrant or lobbyist/registrant PAC at a co-hosted fundraiser count as contributions bundled by the lobbyist/registrant or lobbyist/registrants PAC that forwarded the contributions, regardless of whether the lobbyist/registrant or lobbyist/registrant PAC is a co-host of the fundraiser or an attendee.

For example, at a fundraiser co-hosted by Lobbyist A and several non-lobbyist hosts, Lobbyist B (who is not a co-host of the fundraiser) approaches the candidate for whom funds are being raised and hands the candidate $20,000 in contributions from other individuals. Because these are contributions that have been “forwarded” by Lobbyist B, the reporting committee must disclose the $20,000 of bundled contributions that were forwarded by Lobbyist B irrespective of any amount of credit given to Lobbyist B.

If the reporting committee also credits Lobbyist A, a co-host of the fundraiser, $20,000 for having raised the contributions forwarded by Lobbyist B (because the contributions were received during the fundraising event), the reporting committee must then also disclose that $20,000 of bundled contributions has been credited to Lobbyist A. Similar to “Example 2” above, even though the reporting committee must disclose the entire $20,000 as having been forwarded by Lobbyist B, the reporting committee must
also report that same $20,000 of bundled contributions has been credited to Lobbyist A (again, assuming it has credited Lobbyist A for that amount).

\[ \text{v. Crediting a Prohibited Source} \]

Finally, the NPRM requested comments on whether a lobbyist/registrant that is otherwise prohibited from making or facilitating contributions can be credited by a reporting committee with having raised contributions. Such prohibitions apply to national banks, corporations, labor organizations, foreign nationals, and Federal government contractors. See 2 U.S.C. 441b, 441(c), 441(e); 11 CFR 110.6(b)(2)(ii).

Three comments argued that registrants that are prohibited sources of contributions should not be allowed to be credited with having raised contributions. In contrast to these three comments, other comments stated that, while certain entities are prohibited from making contributions, these entities must be reported if, through their agents, they forward contributions to a reporting committee or are credited with raising contributions for a reporting committee above the reporting threshold. This comment further stated that Congress was well aware that many entities that register under the LDA are, in fact, prohibited sources of contributions under FECA, and that these entities may nonetheless be credited with having raised contributions.

The Commission recognizes that under the LDA, registrants include lobbying organizations that would be prohibited sources of contributions under FECA. Congress is presumed to be aware of existing law when it passes legislation. See \textit{Miles v. Apex Marine Corp.}, 498 U.S. 19, 32 (1990). Thus, Congress’s failure to exempt disclosure about registrants who would be prohibited sources under FECA if they are credited with
raising contributions suggests that Congress intended information about them to be reported.

Accordingly, these final rules operate independently of the prohibitions in FECA and Commission regulations on certain entities making and facilitating contributions and acting as conduits or intermediaries. See, e.g., 2 U.S.C. 441b(a); 11 CFR 114.2(f); 11 CFR 110.6(b)(2)(ii). The concept of “credit” is distinct from making, facilitating, or serving as a conduit or intermediary for contributions. A registrant that is a corporation, for example, would be prohibited from facilitating the making of contributions by persons outside of the corporation’s restricted class. But if a reporting committee nonetheless credits the corporation for having raised contributions received by that reporting committee, and the amount of contributions exceeds the reporting threshold in a covered period, information about the corporate registrant must be reported.

The Commission emphasizes that the prohibitions in FECA and Commission regulations are not affected by this rulemaking and continue to apply. The Commission cautions reporting committees against confusing the giving of credit to a registrant that is a prohibited source, which is permissible and may be reportable, with actually accepting contributions from, or that have been forwarded by, a prohibited source, which is not permissible.

c. 11 CFR 104.22(a)(6)(iii) – Bundled Contributions Do Not Include Contributions from Personal Funds of Lobbyists/Registrants or Their Spouses

New 11 CFR 104.22(a)(6)(iii) provides that bundled contributions do not include contributions made by a lobbyist/registrant or lobbyist/registrant PAC from three sources:
(1) the personal funds of the lobbyist/registrant who forwards or is credited with raising contributions; (2) the personal funds of that person's spouse; and (3) contributions made by lobbyist/registrant PACs. This provision is consistent with HLOGA, which excludes contributions made to the reporting committee by the lobbyist/registrant or lobbyist/registrant's spouse from counting towards the reporting threshold. See 2 U.S.C. 434(i)(3)(A).

The final rule at new 11 CFR 104.22(a)(6)(iii) is nearly identical to the proposed rule, on which the Commission received no comments. The only change from the proposed rule is the application of the rule to contributions made by lobbyist/registrant PACs. New 11 CFR 104.22(a)(6)(iii) extends this exclusion to contributions made by lobbyist/registrant PACs to reflect the fact that lobbyist/registrant PACs, like individuals, may make contributions under FECA in their own right, and the contributions count against the lobbyist/registrant PACs' contribution limits. Contributions made by lobbyist/registrant PACs from committee funds are not bundled contributions, just as contributions made by individual lobbyists from their personal funds are not bundled contributions. Therefore, including contributions by lobbyist/registrant PACs in the exception in new 11 CFR 104.22(a)(6)(iii) is consistent with HLOGA Section 204.

Unlike contributions made by a lobbyist/registrant PAC, or from the personal funds of a lobbyist/registrant or spouse, bundled contributions forwarded by a lobbyist/registrant or lobbyist/registrant PAC will not affect the lobbyist/registrant's or lobbyist/registrant PAC's contribution limits, so long as the lobbyist/registrant or lobbyist/registrant PAC does not exercise any direction or control over the bundled contributions. This result is consistent with the Commission's rule governing earmarked
contributions to candidate committees through conduits and intermediaries. See 11 CFR 110.6(d).

B. 11 CFR 104.22(b) – Reporting Requirement for Reporting Committees

New 11 CFR 104.22(b) implements HLOGA’s reporting provisions by requiring reporting committees to disclose certain information on a new form, FEC Form 3L.

1. 11 CFR 104.22(b)(1) – FEC Form 3L

HLOGA Section 204 requires reporting committees to disclose certain information about each person reasonably known by the reporting committee to be a lobbyist/registrant or lobbyist/registrant PAC that “provided 2 or more bundled contributions” aggregating in excess of the reporting threshold to the reporting committee during the covered period. See 2 U.S.C. 434(i)(1). New 11 CFR 104.22(b)(1) implements this requirement by requiring reporting committees to file FEC Form 3L, on which reporting committees must disclose the name and address of the lobbyist/registrant or lobbyist/registrant PAC, the employer of the lobbyist/registrant (for individual lobbyists/registrants), and the aggregate amount of bundled contributions provided by the lobbyist/registrant or lobbyist/registrant PAC during the covered period. Cf. 2 U.S.C. 434(i)(1).

Accordingly, for each covered period, a reporting committee must disclose information about each lobbyist/registrant or lobbyist/registrant PAC that provided the committee with “[two] or more bundled contributions” aggregating in excess of the reporting threshold during the covered period, regardless of whether those contributions consist of (1) only “forwarded” contributions, (2) only “received and credited” contributions, or (3) some combination of the two types of bundled contributions, and
regardless of whether those contributions were forwarded or received either (1) one-by-
one during the covered period or (2) all at once.

The final rule requires the reporting committee to disclose the aggregate amount
of bundled contributions “forwarded by or received and credited to,” rather than the
amount “provided by,” each lobbyist/registrant or lobbyist/registrant PAC as was
proposed in the NPRM. This change was made to enhance precision and clarity and is
not a substantive change. Otherwise, the provisions are the same as those in the proposed
rule. The Commission received no comments on the proposed provision.

2. Bundled Contributions That are Returned or Refunded

i. Returned Contributions

If a bundled contribution is not deposited and is, instead, returned pursuant to 11
CFR 103.3(a) and (b), 110.1(b)(3)(i), 110.2(b)(3)(i), or 110.4(c)(2), then it does not
aggregate toward the reporting threshold for disclosure of bundled contributions and it
does not be reported on the reporting committee’s Form 3L.

ii. Refunded Contributions

If a bundled contribution is received, deposited, and later refunded pursuant to 11
CFR 102.9(e), 103.3(b)(3), 110.1(b)(3)(i) or 110.2(b)(3)(i), or for any other reason, then
the bundled contribution does aggregate toward the reporting threshold for the covered
period in which it was received. Accordingly, it must be reported on the reporting
committee’s Form 3L if the reporting threshold is exceeded for that covered period. See
2 U.S.C. 434(i)(1); 11 CFR 104.22(b)(1). If the receipt of the bundled contribution is
reported on Form 3L, then the refund of the bundled contribution should also be reported
on Form 3L for the covered period in which the refund occurred.
3. 11 CFR 104.22(b)(2) – Determining Whether a Person is Reasonably Known to be a Lobbyist/Registrant or Lobbyist/Registrant PAC

HLOGA Section 204 requires the disclosure of information about a person who forwards, or who is credited with having raised, two or more bundled contributions aggregating in excess of the reporting threshold during the covered period if the person is "reasonably known by the [reporting] committee to be" a lobbyist/registrant or a lobbyist/registrant PAC. 2 U.S.C. 434(i)(1). HLOGA also requires the Commission to "provide guidance to [reporting] committees with respect to whether a person is reasonably known by a committee to be" a lobbyist/registrant or lobbyist/registrant PAC. 2 U.S.C. 434(i)(5)(B). In so doing, the Commission is to include a "requirement that [reporting] committees consult the websites maintained by the Secretary of the Senate and the Clerk of the House of Representatives containing information filed pursuant to the Lobbying Disclosure Act of 1995." 2 U.S.C. 434(i)(5)(B).

The Commission proposed 11 CFR 104.22(b)(2) to provide guidance with respect to how reporting committees would comply with these requirements. Specifically, under the proposed rule, reporting committees would have had to consult the websites maintained by the Clerk of the House of Representatives, the Secretary of the Senate, and the Federal Election Commission in order to determine whether a person is identified on a filing under the LDA or FECA as a registrant, a lobbyist, or a political committee established or controlled by a registrant or lobbyist. The NPRM requested suggestions as to other sources that reporting committees might be required to check to determine whether a contributor is a lobbyist/registrant or a lobbyist/registrant PAC.
The Commission received two comments in response, both supporting the proposed rule. One comment also recommended amending the proposed rule to provide a safe harbor, such that a reporting committee will be deemed to have complied with the regulation if it relies on the websites for purposes of determining whether a person is a lobbyist/registrant or lobbyist/registrant PAC. See discussion below of section 104.22(b)(2)(ii).

Consistent with the proposed rule, the final rule at 11 CFR 104.22(b)(2)(i) requires reporting committees to consult the House, Senate and Commission websites to determine if a person is a lobbyist/registrant or lobbyist/registrant PAC. If a person is listed on any of these websites as a lobbyist/registrant or lobbyist/registrant PAC, then the person is "reasonably known to be" a lobbyist/registrant or lobbyist/registrant PAC, and information about the person is subject to the reporting requirement of 11 CFR 104.22(b).

The House and Senate websites identify registered lobbyists and registrants. The websites also list political committees disclosed as being established or controlled by lobbyists/registrants on their semi-annual reports of contributions to candidates and Federal officeholders and donations to related entities. These political committees are "lobbyist/registrant PACs" under new 11 CFR 104.22(a)(4)(i). To ensure that reporting committees have the most up-to-date information available about lobbyist/registrant PACs, and to provide information about lobbyist/registrant PACs that are unable to ascertain from the Secretary of the Senate or Clerk of the House of Representatives whether they are established or controlled by a lobbyist/registrant, but which meet the Commission's additional "established or controlled" criteria under 11 CFR 104.22(a)(4)(ii), these final rules require reporting committees to check the
Commission’s website as well. Any political committee that is “established or controlled” by a lobbyist/registrant must identify itself as such on its Statement of Organization (FEC Form 1), which will be posted on the Commission’s website. See 11 CFR 104.22(c), discussed below.

Each reporting committee must consult the House, Senate, and Commission websites “in a manner reasonably calculated to find the name of each person who is a lobbyist/registrant or lobbyist/registrant PAC.” 11 CFR 104.22(b)(2)(i). The Commission recognizes that reporting committees that have exercised due diligence in searching House, Senate, and Commission websites must be able to rely on the results of their searches. Under new 11 CFR 104.22(b)(2)(i), a reporting committee will not be deemed to have “reasonably known” about the status of a lobbyist/registrant or lobbyist/registrant PAC whose name the committee did not find in searching the House, Senate, and Commission websites, so long as the reporting committee performs its searches in a manner reasonably calculated to find the name of each lobbyist/registrant or lobbyist/registrant PAC listed on the websites.

New 11 CFR 104.22(b)(2)(ii) provides that a computer printout or screen capture showing the absence of the person’s name on the House, Senate, or Commission websites on the date in question, may be used to demonstrate that the reporting committee consulted the required websites in a manner reasonably calculated to find the name of each person who is a lobbyist/registrant or lobbyist/registrant PAC, and did not find the name of the person in question. This provision allows reporting committees to rely on the results of website searches, provided that the printout shows that the search history utilized by the reporting committee to verify that the search was performed in a manner
reasonably calculated to find the name of the person in question, as discussed above.

Such a computer printout or screen capture constitutes conclusive evidence that the
reporting committee has consulted the websites and not found the name of the person
sought. Accordingly, except as described below, such evidence demonstrates that a
person was not reasonably known by the reporting committee to be a lobbyist/registrant
or lobbyist/registrant PAC for the purposes of 11 CFR 104.22(b)(1). A reporting
committee also may provide other credible evidence to show that it has consulted the
websites in compliance with 11 CFR 104.22(b)(2)(i).

Notwithstanding new 11 CFR 104.22(b)(2)(ii), a reporting committee is not
titled to rely on the results of a website search if the reporting committee knows that
the person who forwarded or is credited with raising contributions is a lobbyist/registrant
or lobbyist/registrant PAC. New 11 CFR 104.22(b)(iii) provides that a reporting
committee is required to report bundled contributions forwarded by or received and
credited to a person that the reporting committee actually knows is a lobbyist/registrant or
lobbyist/registrant PAC as defined in 11 CFR 104.22(a)(2) or (a)(3), even if the reporting
committee consulted the websites in accordance with 11 CFR 104.22(b)(2)(i) and (2)(ii).
and did not find the person’s name on any of the websites. A reporting committee is
deemed to have actual knowledge if the candidate involved, the treasurer of the reporting
committee, or any members of the reporting committee’s staff who are responsible for
verifying the accuracy of Form 3L has actual knowledge that the person who forwarded
or is credited with raising contributions is required to be listed as a lobbyist/registrant or
lobbyist/registrant PAC.

C. 11 CFR 104.22(c) – Lobbyist/Registrant PAC Reporting Requirements
Prior to HLOGA, the Commission required political committees to identify themselves as only one type of political committee on their Statements of Organization.

See FEC Form I Statement of Organization, Question 5 (“Type of Committee”).

The NPRM sought comments on how, going forward, an organization that is both an SSF and a “lobbyist/registrant PAC” should identify itself on its Statement of Organization, and whether one type of registration should control or whether political committees should identify themselves as both types. The Commission received no comments on this issue.

To promote the greatest disclosure and to accommodate entities that qualify as more than one type of political committee, the Commission is revising FEC Form I to make it possible for committees to identify themselves as more than one type of political committee. Under new 11 CFR 104.22(c), all new leadership PACs and lobbyist/registrant PACs that register with the Commission after the effective date of this rule (30 days after publication in the Federal Register) must check all appropriate boxes on FEC Form 1, in accordance with 11 CFR 102.2(a)(1). See 11 CFR 100.5(e)(6) (definition of leadership PAC) and 11 CFR 104.22(a)(3) (definition of lobbyist/registrant PAC). Leadership PACs and lobbyist/registrant PACs already registered with the Commission must amend their FEC Form 1 in accordance with 11 CFR 102.2(a)(2) no later than ten days after the effective date of this rule (ten days after the thirty-day period from the date of publication of these rules in the Federal Register).

D. 11 CFR 104.22(d) – Where to File

New section 104.22(d) requires reporting committees to file FEC Form 3L in accordance with 11 CFR Part 105. Under 11 CFR Part 105, authorized committees of
candidates for the House of Representatives, the principal campaign committees of
presidential candidates, and any other political committees that support such candidates
must file reports with the Commission. See 11 CFR 105.1, 105.3 and 105.4. Authorized
committees of candidates for the Senate and any other political committees that support
only Senate candidates must file their reports with the Secretary of the Senate. See
11 CFR 105.2. The Commission requested but received no comments on this provision
in the NPRM.

E. 11 CFR 104.22(e) – When to File

Under HLOGA Section 204, the first report required to be filed by a reporting
committee under 2 U.S.C. 434 and 11 CFR Part 104.5 after each covered period must set
forth the name, address, and employer of each person reasonably known by the
committee to be a lobbyist/registrant or lobbyist/registrant PAC who provided two or
more bundled contributions to the reporting committee in an aggregate amount greater
than the threshold amount during the reporting period. See 2 U.S.C. 434(i)(1).

New 11 CFR 104.22(e) implements this provision of HLOGA. It provides that
reporting committees must file Form 3L with the first campaign finance report that they
file under 11 CFR 104.5 following the end of each covered period.

New 11 CFR 104.22(e) mirrors the proposed rule, on which the Commission
requested comments in the NPRM. No comments addressed this section of the proposed
rule specifically, although many did comment on the related “covered period” definition.

As discussed above, new 11 CFR 104.22(a)(5) defines the term “covered period”
as the semi-annual periods of January 1 through June 30 and July 1 through December
31, and as the periods that coincide with a reporting committee’s monthly or quarterly
campaign finance reporting periods under 11 CFR 104.5. Accordingly, reporting
committees must file Form 3L to disclose information about any lobbyist/registrant or
lobbyist/registrant PAC that forwards, or is credited by the reporting committee for
having raised, bundled contributions that aggregate in excess of the reporting threshold
semi-annually and at the end of each reporting period under 2 U.S.C. 434 and 11 CFR
104.5.

When a reporting committee is required to file pre- and post-election reports
under 2 U.S.C. 434 and 11 CFR 104.5, each of those reporting periods constitutes a new
covered period. Accordingly, the reporting committee must also file FEC Form 3L for
those periods if it receives bundled contributions in excess of the reporting threshold
during those periods. Similarly, when a reporting committee is required to file reports in
connection with special elections, under 11 CFR 104.5(h), or runoff elections, each of
those reporting periods constitutes a new covered period, and the reporting committee
must file FEC Form 3L if it receives bundled contributions in excess of the reporting
threshold during those periods.

F. 11 CFR 104.22(f) – Recordkeeping

Commission regulations implement certain statutory recordkeeping requirements
that also apply to certain bundled contributions. For example, political committees must
keep a record and account of each contribution exceeding $50 for three years after filing
the report to which the record or account relates. See 2 U.S.C. 432(c)(2) and (d); 11 CFR
102.9(a) and (c). In addition, any person who receives and forwards contributions to any
political committee must also forward certain information about the original contributor.
See 2 U.S.C. 432(c) and 441a(a)(8); 11 CFR 102.8(c). Any authorized committee that
receives contributions forwarded by a “conduit” or “intermediary” must also maintain records regarding the information forwarded with the contributions by the conduit or intermediary. See 11 CFR 110.6(c) and 102.9(c).

New 11 CFR 104.22(f) refers to the existing recordkeeping requirements in Commission regulations at 11 CFR 102.8, 102.9 and 110.6. The new provisions also require reporting committees to maintain for three years after filing a report, records of any bundled contributions forwarded by or received and credited to a lobbyist/registrant or lobbyist/registrant PAC that aggregate in excess of the reporting threshold for any covered period. The rule requires reporting committees to maintain records that document the name and address of the lobbyist/registrant or lobbyist/registrant PAC, the employer of the lobbyist/registrant (if an individual), and the aggregate amount of bundled contributions forwarded by or received and credited to each lobbyist/registrant or lobbyist/registrant PAC by the reporting committee during the covered period.

The rule requires only the maintenance of documentation with respect to the matters required to be reported, which shall provide in sufficient detail the necessary information and data from which the filed reports may be verified, explained, clarified, and checked for accuracy and completeness. If a committee is not required to file such a report because it has not received any contributions meeting the definition of “bundled contributions” under this section, then the new recordkeeping provision does not apply. Additionally, the new recordkeeping provision does not require reporting committees to create records the committee would not otherwise have created under its usual fundraising and accounting practices. These provisions are similar to the provisions in proposed 11 CFR 104.22(e), on which the Commission received no comments.
G. 11 CFR 104.22(g) and 110.17(e)(2) and (f) – Price Index Increase

New 11 CFR 104.22(g) requires that the disclosure threshold for reporting bundled contributions be indexed by applying a price index increase similar to the price index increase applied to contribution limitations in FECA and Commission regulations. These final rules also add a cross-reference to 11 CFR 104.22(g) in 11 CFR 110.17(e)(2) and (f), which governs the price index increases for certain contribution and expenditure limitations under FECA.

1. 11 CFR 104.22(g) – Price Index Increase

HLOGA Section 204 requires that the reporting threshold be indexed for inflation annually, using the Consumer Price Index as verified by the Secretary of Labor, with 2006 as the “base period.” See 2 U.S.C. 434(i)(3)(B). New 11 CFR 104.22(g) implements this provision by requiring that the initial $15,000 disclosure threshold be indexed in the same manner as certain contribution limits under FECA and Commission regulations. See 2 U.S.C. 441(a)(c) and 11 CFR 110.17. The Commission has placed this provision in new 11 CFR 104.22 rather than in 11 CFR 110.17, which contains similar indexing provisions, because the dollar amount here is a threshold for disclosure, rather than the contribution and expenditure limits covered under 11 CFR Part 110.

New 11 CFR 104.22(g) is the same as the one proposed by the Commission in the NPRM. The Commission requested but received no comments on it.

The NPRM also requested but received no comments on the timing of the application of the indexing for inflation requirement. HLOGA Section 204 provides that the indexing requirement “shall apply” to the reporting threshold “[i]n any calendar year after 2007.” 2 U.S.C. 434(i)(3)(B). HLOGA also provides, however, that 2 U.S.C.
434(i) will go into effect "with respect to reports filed . . . after the expiration of the 3-
month period which begins on the date that the regulations required to be promulgated by
204(b), 121 Stat. 735 at 746 (2007). Given that these rules are expected to go into effect
in March 2009, the initial $15,000 reporting threshold provided for in HLOGA Section
204 will be indexed for 2009. The Commission will publish a notice of the 2009
reporting threshold in the Federal Register and on the Commission’s website in
accordance with new 11 CFR 110.17(e)(2), discussed below.

2. 11 CFR 110.17(e)(2) and 110.17(f) – Price Index Increase

Current 11 CFR 110.17 governs the price index increases for certain contribution
and expenditure limitations, as well as the publication of those limitations on a biennial
basis. While the bundling disclosure dollar threshold is not a contribution or expenditure
limit, it is indexed for inflation on an annual basis, in the same manner as the limitations
in 11 CFR 110.17 are indexed biennially. The Commission concluded that it would be
helpful to the regulated community to place a cross-reference in 11 CFR 110.17 to the
indexing provision in new 11 CFR 104.22(f). Accordingly, the Commission is adding a
cross-reference in new 11 CFR 110.17(f) to new 11 CFR 104.22(g). Additionally, as an
aid to providing the new annual threshold to the regulated community, the Commission
has added new 110.17(e)(2), requiring the lobbyist/registrant bundling threshold to be
published in the Federal Register annually and posted on the Commission’s website.

H. Application of Rule to In-Kind Contributions

The NPRM requested comments on whether the new rules should apply to in-kind
contributions as well as monetary contributions. No comments addressed this issue.
HLOGA uses the term “contributions.” See 2 U.S.C. 434(i)(1). FECA and Commission regulations define “contributions” as including in-kind contributions. See 2 U.S.C. 431(8)(A)(i) and 11 CFR 100.51(a), 100.52, 100.54, 100.56, 109.21. Nothing in HLOGA or its legislative history suggests that “contributions” is intended to have a different meaning from that already established in FECA and Commission regulations. Thus, the Commission determined that these rules apply to both in-kind and monetary contributions. For example, if a lobbyist/registrant asked several contributors to send monetary contributions to a reporting committee and asked others to send computers, furniture, and office supplies to the reporting committee, with a total aggregate value of monetary and in-kind contributions exceeding the reporting threshold during the covered period, and the reporting committee credited the lobbyist/registrant with having raised the contributions, then the reporting committee would have to file Form 3L disclosing information about the lobbyist/registrant for the covered period.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the attached final rules do not have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities will be affected by these rules, which apply only to Federal candidates and their campaign committees, political committees established, financed, maintained or controlled by Federal candidates or individuals holding Federal office, political committees of political parties, and political committees established or controlled by lobbyist/registrants. Authorized committees of Federal candidates are not considered small entities under the definition at 5 U.S.C. 601(6). Leadership PACs established, financed, maintained or controlled by Federal candidates
or individuals holding Federal office also do not qualify as small entities. Such
committes, while established by an individual, are not independently owned and
operated because they are not financed and controlled by a small identifiable group of
individuals; rather, they rely on contributions from a variety of persons to fund the
committees' activities. Political committees representing the Democratic and Republican
parties have a major controlling influence within the political arena and are thus
dominant in their field. However, to the extent that any party committees representing
major or minor political parties or any other political committees might be considered
"small organizations," the number that would be affected by this rule is not substantial.
Additionally, any separate segregated funds that are affected by these rules are
not-for-profit political committees that do not meet the definition of "small organization"
because they are financed by a combination of individual contributions and financial
support for certain expenses from corporations, labor organizations, membership
organizations, or trade associations, and therefore are not independently owned and
operation. Most of the other political committees that are affected by these rules are not-
for-profit committees that do not meet the definition of "small organization." Most
political committees are not independently owned and operated because they are not
financed by a small identifiable group of individuals. In addition, most political
committees rely on contributions from a large number of individuals to fund the
committees' operations and activities.
Furthermore, any small entities affected should not feel a significant economic
impact from the final rule. The activity being regulated (receiving bundled contributions
that have been forwarded by, or that have been raised by and credited to,
lobbyists/registrants or lobbyist/registrant PACs) is entirely voluntary. Any reporting
obligations for reporting committees are triggered only if entities choose to engage in this
activity above the reporting threshold for any given covered period. The reporting
obligations for reporting committees are also limited to contributions either forwarded by
or raised by and credited to lobbyists/registrants or lobbyist/registrant PACs. The
reporting requirement for lobbyist/registrant PACs is limited to the political committee
disclosing itself as a lobbyist/registrant PAC on the political committee’s initial Form 1
(Statement of Organization) filed with the Commission, or to filing a single amendment
to the political committee’s Form 1. Therefore, the final rules do not have a significant
economic impact on a substantial number of small entities.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 104

Campaign funds, political committees and parties, reporting and recordkeeping
requirements.

11 CFR Part 110

Campaign funds, political committees and parties.